

513 210
15 C. C.
R E P O R T S

Francis O F Langrave.

CERTAIN CASES,

Determined and Adjudged

BY THE

COMMONS in PARLIAMENT,

IN

The Twenty-first and Twenty-second Years
of the Reign of King JAMES the First.

COLLECTED

By **JOHN GLANVILLE, Esq;**

Serjeant at Law, then Chairman of the
Committee of Privileges and Elections.

TO WHICH IS PREFIXED,

An HISTORICAL ACCOUNT of the ancient Right of
determining Cases upon controverted Elections.

L O N D O N:

Printed for S. BAKER and G. LEIGH, York-street,
Covent-garden; T. PAYNE, at the Mews Gate;
and B. WHITE, Fleetstreet.

MDCCLXXV.

18

R E P O R T S

OF
CERTAIN CASES

Determined and Adjudged

BY THE

COURT

COMMONS IN PARLIAMENT ASSEMBLED

MEMBER OF THE HOUSE OF COMMONS

The Tenth Edition of the Reports of the

of the House of Commons



TO
WILLIAM AISLABIE,
OF STUDLEY ROYAL,
IN
THE COUNTY OF YORK, ESQ.
MEMBER OF PARLIAMENT
FOR
THE BOROUGH OF RIPON
IN THAT COUNTY,
AND
ONE OF THE AUDITORS
OF
HIS MAJESTY'S IMPRESTS,
THIS WORK
IS MOST RESPECTFULLY INSCRIBED
BY
THE EDITOR.

TO
WILLIAM AINSLIE,
OF STUDY ROYAL,
IN
THE COUNTY OF YORK, ESQ.
MEMBER OF PARLIAMENT
FOR
THE BOROUGH OF THROU
IN THAT COUNTY
AND
ONE OF THE AUDITORS
OF THE
HIS MAJESTY'S TREASURY
THIS WORK
IS MOST RESPECTFULLY INSCRIBED
BY
THE EDITOR.

P R E F A C E.

THE Reports now offered to the Public contain an account of such of the Cases on controverted Elections determined by the House of Commons in the years 1623 and 1624 as that able Lawyer Mr. Glanville, (afterwards Serjeant) who was then Chairman of the Committee of Elections, thought worthy of being preserved, and committed to writing.

The strength of reasoning which governed the determinations in all, or most, of these Cases, will appear obvious to every Reader: but what renders them the more interesting and important is, that the *Reasons* or *Founda-*

b

tions

tions given in support of these Decisions, are no where else to be met with.

The Journals of the House of Commons from the 1st of King Edw. VIth, where they begin, down to the 23d of Queen Elizabeth, where those of her reign end, are penned in a short and unsatisfactory manner; and the Journals of the reign of King James Ist, were far from having attained the precision and exactness to which those of subsequent reigns arrived.

The printed Journals in the years 1623 and 1624, the time when these Reports were made, are particularly imperfect and complicated.—The Clerk of the House of Commons at that time was in an infirm state of health, which would not admit of his constant attendance on his duty.—His son therefore sometimes attended for him: and they both, occasionally, took rough minutes, from which the Journals are printed. But these are so obscure, unsatisfactory, and, in some instances, even contradictory, that they

they rather tend to introduce confusion and uncertainty than to afford information*. This evinces the necessity of supplying, as much as possible, the defects of those Journals, and of rendering them more perfect and compleat, wherever it can be done, from authentic documents; and it is presumed, that these Reports, drawn up by Mr. Glanville in so clear and concise a manner, cannot but be deemed a valuable acquisition, and a most useful Appendix to the Journals of those years.

The shortness of the duration of Parliaments for some ages after their establishment upon their present system, of which it frequently happened, that two or three were summoned to meet at different places in the space of a year, afforded but few opportunities for receiving or proceeding upon complaints of undue elections or returns, if any had been made; and the laborious Mr. Prynne, with all his industry,

* Of this uncertainty a remarkable instance appeared in the Case of Pontefract in the last Parliament.

says *, that from the 49th of Hen. III^d (A^o 1265) to the 22d of Edw. IVth (A^o 1483) he could not find that more than *two* or *three* Cases on Elections were *questioned* or *complained* of. But, in after-times, when property became more diffused into the hands of the Commons, by the Lords, the great and principal landholders, being set at liberty to alienate their Entailed possessions, in consequence of Common Recoveries being countenanced by the Legislature:—By the Possessions of Religious Houses being granted, after the dissolution, chiefly into the hands of Commoners:—By the Statute of Wills:—And by the great encrease of Trade and Commerce:—By these and other concurring causes, which happened in the former part of the sixteenth century, power, the inseparable attendant upon property, became more vested in the hands of the Commonalty. From this period may be dated the consequence and importance of the House of Commons.—From

* Vide Mr. Prynne's Brev. Parl. Rediv. p. 137.

thence, powers and privileges were claimed and exerted by that House unknown in former ages.—And from thence, a spirit of independence and freedom arose, which soon placed that branch of the Legislature in the high and respectable state in which we now behold it.

The House of Commons having thus become so essential a part of the constitution, the duty of attending the service of that House was begun to be deemed not so burthensome as it had formerly been.—Some Boroughs, which had anciently bore the charge of returning and maintaining members, but had long, through poverty, refused it, then petitioned to have that privilege restored.—And others which had no claim to that privilege, as a matter of antient right, were then enabled to enjoy that liberty either by express Acts of the Legislature, or by Letters Patents from the Crown, granting the particular privilege of sending members to parliament. In some instances, even the

sheriffs summoned them to send members upon their own authority only.

This practice of reviving the antient, and creating new rights of returning members, continued in every reign from King Henry VIIIth to King Charles IIId, inclusive: and it appears by the annexed list, collected from Mr. Willis's Notitia Parl. and other materials, that within that period, there was an encrease of near two hundred members made to the House of Commons.

The Journals of the reigns of Queen Elizabeth and King James Ist furnish us with frequent instances of Elections being disputed in the country, and controverted before the House of Commons; but the number having greatly encreased in the two last parliaments of King James, made many of the ablest members of those parliaments agree in opinion, that some certain *Rules or great Outlines* of the legal Rights
of

of Voting, were become necessary to be laid down, as a guide and direction to the Electors and Candidates in the country, and as a remembrance of the *Reasons* and *Grounds* upon which the determinations of the House were founded.—This was attempted to be done by Mr. Glanville, and the other members of the Committee of Elections, in the Reports now offered to the public.

The Committee before whom these Cases were agitated, was a Select Committee, composed of a certain number of members eminent for their great abilities, and particularly distinguished for their knowledge in the laws and constitution of their country. Their names are preserved in the Journal of the 23d of Feb. 1623, and are as follow *; viz.

Sir John Strangeways, Sir Edward Coke,
Sir George Moore, Sir Dudley Digges, Sir

* Vide Journal, vol. I. p. 16.

Walter Earle, Sir William Strode, Sir Gilbert Gerrard, Sir Robert Hatton, Sir Thomas Jermyn, Sir Guy Palmes, Mr. Neville, Sir James Perrott, Sir George Fane, Mr. Recorder [Sir Heneage Finch], Sir John Jephson, Mr. Solicitor General [Sir Robert Heath], Sir Thomas Hatton, Mr. Drake, Sir Henry Poole, Sir Robert Philips, Sir Nathaniel Rich, Sir George Goring, Sir Peter Hayman, Mr. Pym, Sir John Saville, Sir Thomas Cheeke, Sir Oliver Luke, Sir Thomas Trevor, Mr. Fanshaw, Sir William Pooley, Sir William Fleetwood, Sir Francis Fane, Mr. Alford, Sir Francis Barrington, Sir George Manners, Mr. Glanville, Sir William Herbert, Mr. Drue Drury, Sir Francis Barnam, Sir Nicholas Tufton, Sir Henry Spiller, Sir Henry Fane, Sir Edward Peyton, Sir Miles Fleetwood, Sir Richard Young, Sir Robert Mansell, Sir Benjamin Rudyard, Sir Thomas Denton, Sir Roger North, Mr. Currington, Mr. Chancellor of the Duchy [Sir Humphry May], Sir Charles Morrison, Mr. Featherstone, Sir Edward Cecill, Mr. Mohun,

Mohun, Sir Henry Wallop, Mr. Brooke,
Mr. Noy, and Mr. Selden.

Although it is at this time universally known and admitted to be the sole right of the House of Commons to examine and determine all matters relating to the election of their own members *; and that neither the qualification of any *Elector*, nor the right of any person *elect*ed, is cognizable, or determinable, or will be suffered by that House to be called in question, by any other judicature whatsoever (except in such cases as are specially provided for by Act of Parliament): Yet there have been times when this great Palladium of the Constitution, and of the Independency and Freedom of the House of Commons, hath been disputed; and appears, in some instances, to have been claimed and exercised by other powers.

In the latter end of the sixteenth and the beginning of the seventeenth centuries, this

* Vide Journal, 27 Jan. 1603.

question

question was warmly agitated and contested between the Crown and the House of Commons. On the part of the Crown it was contended, that as the writ for election issued out of, and was returnable into, the Court of Chancery, the Lord Chancellor was the sole and proper judge of the due execution of the writ, and consequently of the legal qualifications of the elected*.

On the other hand, it was insisted upon by the House of Commons, that the sole and exclusive right of determining upon cases concerning the election of their own members, was lodged in that House†.

Again, Mr. Prynne contends, that the King alone, or the King and the House of Lords, were, originally, the proper judges of disputes relating to the election of members of the House of Commons‡.

* Vide Dewes's Journal, p. 393.

† Dewes's Journal, p. 397.

‡ Vide Mr. Prynne's Plea for the Lords, p. 394, 395. Brev. Parl. part IV. p. 259, 260.

An historical deduction of the most material Cases relative to this important Question, as they appear upon the Rolls and Journals of Parliament, and other authentic Documents and Records, it is presumed, will be useful and entertaining to the Reader.

The first case we find relative to this subject is in the 12th year of King Edw. IId, when Mathew de Cranthorn presented a Petition to the King's Council, complaining of a false return of a knight of the shire for the county of Devon having been made by the sheriff of that county; and praying to have due remedy for the receiving his costs. Which Petition was referred to the Court of Exchequer, to enquire into the matter of the said false return. The said Petition and Answer are as follows; viz.

“ A Con-

Communia
in Scacc'
penes Rem'
Thes' Pasch.
12 E. II.

“ A Conseil nostre Seigneur le Roi
 “ monstre Mathew de Cranthorn :
 “ Que come briefs fust venu en le
 “ Countee de Deveneshire pur faire
 “ venir icy a cest Parlement, deus Cheva-
 “ liers pur la Comune del dit Conte ; meisme
 “ celui Mathew par le Eveske de Excestre,
 “ Sire William Martyne, par assent des
 “ autres bons gentz de cel Conte, si feust
 “ eslu, et al Visconte en pleyn Conte pre-
 “ sent, & garni qe il fust a cest Parlement,
 “ et sur ceo par meisme le Visconte ce So-
 “ mons. Mes ore, en deceit de luy, Robert
 “ Bendyn, Visconte del dit Conte, si ad
 “ retourne autres en son lieu ; encontre la
 “ volunte de dist Comune, pur faire luy cel
 “ damage. Et pur ce, le dist Mathew prie
 “ due remedie pur ses Custages aver.

Responsio. “ Quoad istam Petitionem habeat
 “ Breve Thesaurar' & Baron' de Scaccario
 “ quod venire fac' Sub-Vicecom' ad Respon-
 “ dend' de falso retorno predict'.”

In the 36 Edw. III (A° 1362), the election of Edward Laurence and Matthew de Rishton, who were returned knights for Lancashire, being controverted, a writ issued after the end of the Parliament, directed to the sheriff of that county, commanding him to enquire, at a full meeting in the *County-Court* of the knights and other good men of the Commonalty of the said county, whether the two persons returned, or any others, were elected; and, if it should appear that other persons were elected, the sheriff was commanded to return their names into the Chancery; which Writ was as follows, viz.*

“ Rex Vic’ Lanc’ Salutem. Rot. Claus. 36.
E. III. m. 2.
& 3. dorso.
“ Quia super Electione facta de
“ Militibus pro Communitate
“ Com’ predicti, pro ultimo Parlamento nostro
“ in Com’ predicto venientibus, in maxima
“ altercatio facta existit. Nos ea de causa
“ volentes super electionem predictam ple-

* Prynn, Brev. Parl. part I. p. 259.

“ nius

“ nius certiorari, tibi precipimus quod habita
 “ in pleno Com’ tuo super electionem predic-
 “ tam cum Militibus & aliis probis Hominibus
 “ de Communitate dicti Com’ deliberatione &
 “ informatione diligentibus, utrum, viz. Ed-
 “ wardus Laurence & Mattheus de Risheton
 “ qui in Brevi nostro de Parlamento predicto
 “ tibi directo, retornati fuerunt pro Militibus
 “ dicti Com’ electi fuerint, an alii. Et si per
 “ deliberationem et informationem hujus-
 “ modi inveneris ipsos de Communi assensu
 “ totius Com’ predict’ pro Milit’ dicti Com’
 “ electos fuisse, tunc hab’ fac’ eisdem Edwardo
 “ & Mattheo decem & octo libras & sex-
 “ decim solidos, pro Expensis suis veniendo
 “ ad Parliamentum predictum, ibidem mo-
 “ rando & exinde ad propria redeundo, viz.
 “ pro quadraginta & septem Diebus; utroque
 “ predictorum Edwardi & Matthei capiente
 “ per Diem quatuor solidos. Et si alii pro
 “ Militibus ejusdem Com’ electi fuerint,
 “ tunc Nos de nominibus illorum sub Si-
 “ gillo tuo in Cancellaria nostra reddas certio-
 “ res

“ res, hoc Breve nobis remittens. T. R.

“ apud Westm’ xvii Die Novembris.

“ Per ipsum Regem.”

The sheriff, who, it may be presumed, was in the interest of the members returned, neglecting to make the enquiry directed by this writ, a second writ issued the 12th of February following, directed to the *Justices of the Peace* of that County, commanding them, at their next sessions of the peace, to examine into the matter of the said election, and to certify the same, as it should appear to them into the Chancery, viz.

“ Rex dilectis & fidelibus suis	Rot. Claus. 36
“ Godfr’ Folejambe & Sociis	E. III. m. 2.
“ suis Custodibus Pacis in Com’	& 3. dorso.
“ Lanc’ Salutem. Cum nuper pro eo quod	
“ super electionem &c. <i>ut supra usque</i> ibi red-	
“ deret certiores, & <i>tunc sic.</i> Ac jam intel-	
“ lexerimus quod predicti Edwardus & Mat-	
“ theus qui locum tenentes dicti Vic’ exist-	
“ unt & Returnum Brevium nostrorum Com’	
“ predicti	

“ predicti faciunt, breve nostrum predictum
 “ penes se retinent, & executionem aliquam
 “ inde hactenus facere non curarunt, & ni-
 “ chilominus vadia illa indies levare faciunt,
 “ in nostri deceptionem manifestam. Nos
 “ volentes hujusmodi deceptioni obviare,
 “ Vobis Mandamus, quod proxima sessione
 “ vestra, vocatis coram Vobis Militibus &
 “ aliis probis Hominibus ejusdem Com’, &
 “ alios quos noveritis evocandos, diligentem
 “ informationem & inquisitionem super pre-
 “ missis capiat, & de eo quod in hac parte in-
 “ veneritis, Nos in Cancellaria nostra sub Si-
 “ gillis Vestris vel alicujus vestrorum distincte
 “ & aperte sine dilatione reddatis certiores,
 “ hoc breve nobis remittentes. T. R. apud
 “ Westm’ xii Die Februar’.

“ Per ipsum Regem.”

In the 7 Ric. II (A° 1384) Thomas Camoyes, a Baron of Parliament *, was elected

* This Thomas Camoyes was summoned as a Baron to this Parliament, as appears by the summons printed by Sir William Dugdale.

one of the Knights for the County of Surrey, in the Parliament summoned to meet the 25th of October.—He being a Peer of Parliament was certainly *not eligible*.

The King and his Council, before the meeting of the Parliament, took notice of this undue Return, and declared it to be void; and issued the following Writ for the electing a new Knight in his room*.

“ Rex, Vic’ Sur’, Salutem. Rot. Claus. 7
R. II. m. 32.
 “ Quia ut accepimus tu Tho-
 “ mam Camoys, Chivaler, qui Bannerettus
 “ est, sicut quamplures antecessorum suo-
 “ rum extiterunt, ad effendum unum Mili-
 “ tem venientium ad proximum Parliamen-
 “ tum nostrum pro Comunitate Comitatus
 “ predicti, de assensu ejusdem Comitatus,
 “ eligisti. Nos advertentes quod hujusmodi
 “ Banneretti ante hec tempora, Milites
 “ Comitatus ratione alicujus Parliamenti

* Selden’s Titles of Honour, p. 737. Prynne’s Brev. Parl. part II. p. 117. Plea for the Lords, p. 145.

“ eligi, minime consueverunt, ipsum de of-
 “ ficio Militis ad dictum Parliamentum pro
 “ Comunitate Comitatus predicti venturi,
 “ *exonerari Volumus.* Et ideo tibi precipi-
 “ mus, quod quendam alium Militem
 “ idoneum et discretum, gladio cinctum,
 “ loco ipsius Thome, eligi; et eum ad
 “ diem et locum Parliamenti predicti, venire
 “ facias, cum plena et sufficienti potestate,
 “ ad consentiendum hiis que in Parlamento
 “ predicto fient, juxta tenorem primi Brevis
 “ nostri, tibi pro electione hujusmodi Mili-
 “ tum directi, et nomen ejus Nobis scire
 “ facias. *Teste Rege apud Westm’ viii die*
 “ *Octobris.*”

In consequence of this second Writ
 Thomas Salaman and John de Hadresham,
 knts. were elected and returned Knights
 for the said County of Surrey *.

In the 7 Ric. II. the mayor, bailiff, and
 commonalty of Shaftesbury petitioned the

* Prynne's Brev. Parl. part IV. p. 137.

King,

King, Lords, and Commons, complaining of an undue Return for that Borough.— This Petition is annexed to the Writ of Election, but it does not appear that it was proceeded upon; the person said to have been wrongfully returned by the sheriff, not, in fact, being returned, the sheriff, possibly, having amended the return himself; or if it was done by any other authority, no traces of it appear. The Petition was as follows *:

“ A nostre tres excellent & tres gracious
 “ Seigneur nostre Seigneur le Roi & les
 “ tres nobles Seigneurs & sages Comunes
 “ de cest present Parlement, pleignent les
 “ Maïor, Bailifs, & les Comunes de Shaftes-
 “ bury, de la ou per vertue del Briefs le
 “ Roi del Somons de mesme cesty Par-
 “ lement, ils retornerent deux de lez suffi-
 “ fantz & mieutz ables de dite Ville, sibien
 “ pur nostre Seigneur le Roi, come pur la
 “ Comune de dite Ville, cest assavoir,

* Prynne's Brev. Parl. Rediv. p. 286.

“ Wauter Henle & Thomas Seward : Monf’
 “ John Stretch, Viscount de Dorset, q’ore
 “ est, de son autorite demesme, et encontre
 “ leur retorne, & a cause q’il supposa que
 “ le dit Thomas Seward est moeneret en le
 “ dite Parlement, pur le profit & avantage
 “ nostre dit Seigneur le Roi, retourna un
 “ Thomas Camel, a graunt damage nostre
 “ Seigneur le Roi, & encontre la volunte
 “ des Maire & Comunes fufdites, & la ou
 “ l’avant dit Thomas Seward ad rescieu pur
 “ ses costages de dite Ville, come pleyne-
 “ ment puisse apparer par un lettre testimo-
 “ nial enseale defoutz leur comune seal. Si
 “ please a nostre tres excellent & tres gra-
 “ cious Seigneur le Roi, les nobles Seigneurs,
 “ & fages Comunes fufdites, ent ordenir
 “ remedie, en over de charite.”

In the 5 Hen. IV (A^c 1413) the case of
 Thomas Thorp is thus stated upon the Roll
 of Parliament :

“ Item,

“Item, because that the Writ Rot. Parl. 5
H. IV. n. 38.
 “of Summons to Parlement,
 “returned by the sheriff of Rutland, was
 “not sufficiently nor duly returned, as the
 “Commons conceived. The said Commons
 “prayed the King and the Lords in Par-
 “liament, that this matter might be duly
 “examined in Parliament; and that in case
 “there should be default found therein,
 “that such a punishment might be inflicted
 “as might become exemplary to others
 “offending in the like manner. Where-
 “upon our said Lord the King, in full Par-
 “liament, commanded the Lords in Parlia-
 “ment to examine the said matter, and to
 “do therein as to them should seem best in
 “their discretions. And thereupon the said
 “Lords caused to come before them in
 “Parliament, as well the said Sheriff, as
 “William Oneby, who was returned by
 “the said Sheriff for one of the Knights
 “for the said County, and Thomas Thorp,
 “who was elected in full County to be one

“ of the Knights of the said Shire for the
 “ said Parliament, but not returned by
 “ the said Sheriff. And the said parties
 “ being duly examined, and their reasons
 “ well considered in the said Parliament,
 “ it was awarded by the said Lords, that
 “ because the said Sheriff had not made a
 “ sufficient Return of the said Writ, that
 “ he shall amend the Return, and that he
 “ shall return the said Thomas for one of
 “ the said Knights, as he was elected in the
 “ said County. — And moreover that the
 “ said Sheriff, for this default, shall be dis-
 “ charged from his office, and committed
 “ prisoner to the Fleet; and make Fine
 “ and Ransom at the King’s pleasure.”

Although it is somewhat foreign to the
 present purpose, yet it is thought not improp-
 er to insert here the following curious agree-
 ment, made in the year 1463, the third
 year of King Edw. IV, between the Bailiffs
 of the Town of Donewych, and their Re-
 presentative in Parliament; which shews,
 that,

that, even in that early period, there were reasons why the members chose to ease their constituents of the charge of maintaining them*.

“ This bylle indentyd, mead the xvi
 “ day of Aprille, in the thredde zer
 “ of King Edward the fowrte, betwyn
 “ Thomas Peers and John Scherlyng, Bal-
 “ lyffs of the Town of Donewych, and
 “ John Strawnge of Brampton, Esquyer,
 “ wetneffyth, that the sayd John Strawnge
 “ grauntyth be these presents to been oon
 “ of the Burgeys for Donewych at the Par-
 “ lement, to been holdyn at Westm’ the
 “ xxix day of thys sayd monyth of Aprill;
 “ for the qwech, qwhedyr it holde longe
 “ tyme or shortt, or qwhedyr it fortune to
 “ been prorogytt, the sayd John Strawnge
 “ grauntyth no more to takyn for hys
 “ wagys than a Cade of full Heryng and
 “ halff a barell full heryng, tho to been
 “ deliveryd be Chrystemasse next comyng.

* From the Original, in the possession of Thomas Asle, Esq.

“ In wetnesse heroff eythyr parte to other
 “ Indenture interchawnjabilly her selys hav
 “ fett, day and zer abovesayd.”

By the printed Journals of the reign of Queen Mary, it appears that the House of Commons was then in possession of the power of determining on the qualification of the Members returned, and of directing new Writs to be issued in the case of double Returns *.—But it is remarkable, that there are not, in the Journals of that reign, any traces entered of complaints on undue Elections of Members to Parliament. Notwithstanding Bishop Burnet asserts, that there was foundation for a greater number than had ever happened in any preceding reign.

This Prelate, in his History of the Reformation, vol. II. p. 252, says, “ that in
 “ the choice of Queen Mary’s first Parlia-

* Vide Com. Journ. vol. I. p. 27. 12th and 13th October, 1st Mary.—And p. 47. 27th and 28th Jan. 4th and 5th of Philip and Mary.

“ ment,

" ment, in many places in the country,
 " men were chosen by force and threats;
 " in other places, those employed by the
 " court did, by violence, hinder the Com-
 " mons from coming to chuse; in many
 " places false returns were made; and some
 " were violently turned out of the House"
 " of Commons.

The same author, p. 261, says, " Gar-
 " diner (Bishop of Winchester) was sent to
 " the Emperor, to inform him, that unless
 " great sums of money were sent over for
 " carrying the Elections for this Parlia-
 " ment, the opposition would be such, that
 " the Queen must lay down all thoughts of
 " marrying his son."

The first session of Queen Elizabeth's
 fourth Parliament was in 1572, in the
 fourteenth year of her reign. — The second
 session was in 1575, in the eighteenth year
 of her reign. — The third and last session
 began the 16th of January, and ended the

18th of March, 1580, in the twenty-third year of her reign.

During an interval of five years, the seats of many members were become vacant by death ; others were abroad in the Queen's service ; and others were sick and unable to attend the service of the House.—On suggestions of these facts being made to the Lord Chancellor, he, during the prorogation, directed new Writs to issue for choosing other Members in the room of those suggested to be dead, absent, or sick.—This evidently opened a door for improper practices and collusions in the country, by Members consenting to be reported to be dead, or incurably sick, in order to give opportunities to other persons, with whom they might bargain or agree, to be chosen in their room ; and, in other respects, as these suggestions were frequently untrue, it was a grievance which required to be effectually remedied for the future.

The

The Journal of the 16th of Jan. 1580 * takes notice, “that many of the Knights, “Citizens, Burgeſſes, and Barons, ſince the “*laſt Seſſion* of that Parliament, were changed; “ſome by death, and ſome by other occa- “ſions, and *new* returned in ſome of their “places, and in ſome others *none*.”

On the 18 Jan. 1580 †, “It was moved, “that it was not meet or convenient to “chooſe a new Speaker by perſons that were “*not of the Houſe*; and withal, that it was “thought of ſome, that divers perſons “being *newly returned* in the places of “others *yet living*, were not, or ought to “be, accounted Members of the Houſe. “Whereupon an admonition was pro- “nounced, that all ſuch as were newly “returned in the places of others, *yet living*, “ſhould forbear their repair to the Houſe “till their Caſes were further conſidered.”

* Vol. I. p. 116. col. 2.

† Journal, p. 117. col. 1.

January 19, the House again assembled, Mr. Speaker Elect being in the chair.

The matter began to be debated touching the said Burgeses, of whom question was made the day before; and the case was opened by Mr. Norton, a citizen of London, to the effect following*; viz.

“ That there be Members of this House
“ absent in her Majesty’s service, as in Em-
“ bassage; or in her affairs in Ireland; in
“ whose place new be returned.

“ Item, some persons be sick of *durable*
“ diseases, as agues, &c. and new be re-
“ turned in their places.

“ Item, one Mr. Flowerden was, the last
“ session, Burges for Castle-Rising in Nor-
“ folk, and in the vacation was sick. Upon
“ suggestion of which sickness, a Writ went

* Sir S. Dewes, p. 281, 282.

“ to

“ to choöfe anew. Whereupon Sir Wil-
 “ liam Drewry is chofen and returned for
 “ Caſtle-Riſing; who now appeareth, and
 “ Mr. Flowerden alſo.

“ In the ſame vacation, one Beaumont,
 “ a Citizen for Norwich, is ſick of the
 “ gout: upon ſuggeſtion whereof a Writ
 “ went out to chuſe anew for Norwich.
 “ Mr. Flowerden is chofen, returned, and
 “ newly ſworn, for Norwich.

“ The Queſtions are, Whether ſuch as be
 “ returned in places of perſons ſick, or of
 “ perſons abſent in the Queen’s ſervice, be
 “ Burgeſſes, and the old diſcharged. Mr.
 “ Norton thought the old Burgeſſes re-
 “ mained, and that the ſaid cauſes of ſick-
 “ neſs and ſervice are good excuſes for their
 “ abſence, but no cauſes to remove them
 “ and chuſe new. And for this he alledged
 “ divers precedents; as of Doctor Dale,
 “ Embaſſador in France, and of Sir Henry
 “ Sidney, Deputy of Wales; who, having
 “ been

“ been formerly both of them Members of
 “ the House of Commons, and absent by
 “ reason of both their said imployments,
 “ yet, when their case was once made
 “ known to the House, and there ques-
 “ tioned, they were still retained as Mem-
 “ bers of the said House, and no new
 “ chosen or admitted. But, however, al-
 “ though such absent Members, by reason
 “ of sickness or foreign imployment, might
 “ be removed, yet that ought not to be
 “ done upon a suggestion in the Chancery,
 “ but by the Judgement of the House of
 “ Commons, upon information thereof.

“ Mr. Serjeant Flowerden, Mr. Robert
 “ Snagg, Mr. Seintpoole, and Mr. Serjeant
 “ Fleetwood, Comptroller, argued to the
 “ contrary; and said, that in all these cases,
 “ new are to be chosen, and the old dis-
 “ charged; and that it needeth not to have
 “ discharge by the judgement of the House;
 “ but it sufficeth to make suggestion in the
 “ Chancery, and to procure a Writ there-
 “ upon

“ upon for a new Election. And to ques-
 “ tion this was to discredit the Lord Chan-
 “ cellor, and to scandalize the judicial pro-
 “ ceedings of that Court.

“ And it was further alledged, that not
 “ only in these before-recited cases, but also
 “ in all others, where any new Elections
 “ are to be made, if the Lord Chancellor
 “ send out a Writ, upon any suggestion,
 “ to chuse a new Burgefs in the place of
 “ an old, whether the cause be sufficient
 “ or non-sufficient to remove the old, or
 “ whether the suggestion be true or false;
 “ yet, if a new be returned, the House of
 “ Commons is to accept the Burgefs, and
 “ to allow the return; and the old Burgefs
 “ remaineth discharged, until the matter be
 “ further cleared upon the examination and
 “ judgement of the said House.

“ And, according to these opinions, the
 “ new Burgeffes elected and returned in
 “ places of men living, were received and
 “ allowed

“ allowed in the said House ; Mr. Flower-
 “ den keeping his place for Norwich, Sir
 “ William Drewry for Castle-Rising, Mr.
 “ Richard Herbert in place of Mr. Pugh
 “ for Montgomery ; and so the like of the
 “ rest that were new elected.”

“ 21 January, 1580, 3d of Eliz. * Mr.
 “ Broughton made a motion to know the
 “ mind of the House touching his compa-
 “ nion, or fellow-burgesses, who now stood
 “ indicted of felony, whether he ought to
 “ remain of the House, or to forbear coming ;
 “ or that a new one should be elected in his
 “ place. Whereupon, after the matter had
 “ been a while agitated and disputed of in
 “ the House, it was adjudged, that he ought
 “ to remain of the House till he were con-
 “ victed ; for it may be any man’s case who
 “ is guiltless to be accused, and thereupon
 “ indicted of felony or a like crime.

* Dewes, p. 283.

“ After

“ After which judgement given by the
 “ House, Mr. Norton did further infor-
 “ them, that the Lord Chancellor willed
 “ him to signify unto the House, that this
 “ matter had been moved to him, and that
 “ a new Writ had been desired of him for the
 “ Election of another in the place of the said
 “ Burgefs; but that his Lordship had refused
 “ to yield thereunto: and had further al-
 “ ledged, that he ought first to be removed
 “ by the judgement of the House; and that
 “ thereupon the House signifying so much
 “ to his Lordship, he would thereupon grant
 “ a new Writ for a second Election to be
 “ made.

“ The judgement of the Lord Chan-
 “ cellor*, who was both learned in the laws,
 “ and had been an ancient Parliament-man,
 “ was much commended by the House;
 “ and the rather, because it so opportunely
 “ concurred, at this time, with the judge-
 “ ment of the House. Which resolution

* Sir Thomas Bromley, Knt.

“ seemeth cross to that former opinion be-
 “ fore given in the House, on Thursday last
 “ past, the 19th day of this instant Ja-
 “ nuary, viz. that new Burgeſſes being re-
 “ turned in the place of others living, were
 “ to be allowed and received in the House.

“ But yet I conceive that these two opi-
 “ nions may well stand together; for here
 “ the Lord Chancellor was pleased not to
 “ grant a Writ for a new Election, but to
 “ stay the judgement of the House, which
 “ was, without all question, the most just
 “ and safe way of proceeding; whereas in
 “ those other before-recited cases, he had
 “ granted out Writs for new Elections, upon
 “ meer suggestions; and then, without all
 “ question, the Burgeſſes returned upon
 “ these Writs are to be received into the
 “ House, and must remain as members
 “ thereof, until they be again rejected by
 “ the judgement of the House. So also it
 “ is, if a Sheriff shall return one for a
 “ Knight of a Shire who was unduly, or
 “ not

“ not at all, elected ; yet he that is so re-
 “ turned, remaineth a member of the House,
 “ until his said Election be declared void by
 “ the judgement of the House. But why
 “ in the said former case, one elected in a
 “ place of a Burges sick (upon suggestion,
 “ doubtless, that he could not recover)
 “ should be adjudged by the House to be
 “ well-elected and returned, notwithstand-
 “ ing that the former Burges was present
 “ in the Parliament, and had recovered his
 “ health, I cannot possibly guess.”

“ The 24 Feb. 1580 *, the House being
 “ called, and some returned into the places
 “ of others deceased since the last session of
 “ this present Parliament, and yet some of
 “ them supposed to be living ; some in
 “ places of others sick and diseased, and
 “ some in place of others imployed in the
 “ Queen’s service ; it was ordered, that all
 “ the said returns, of this Session, be exa-
 “ mined, and the orders and precedents of

* Dewes’s Journal, p. 300.

“ this House, in like cases formerly used,
 “ to be considered by some of this House ;
 “ and thereupon report to be made to the
 “ whole House, of the state of the said re-
 “ turns and precedents ; to the end further
 “ order might be taken therein accord-
 “ ingly.

“ Whereupon were appointed for that
 “ purpose, Mr. Treasurer, Mr. Chancellor
 “ of the Duchy, Mr. Treasurer of the
 “ Chamber, Sir Thomas Shirley, Sir Ed-
 “ ward Horsey, Sir William Moore, Sir
 “ Henry Gate, Sir John Hibbott, Mr. At-
 “ torney of the Duchy, Mr. Digges, Mr.
 “ Cromwell, and Mr. Powle *.”

“ 18 March, 1580 †, Mr. Cromwell, one
 “ of the Committee for examination of the
 “ returns and defaults, noted upon the last
 “ calling of the House, made report unto
 “ the House of the state of the same exa-

* Journal, p. 129.

† Dewes, p. 307, 308.

“ ministrations.

“ minations. Whereupon, after fundry mo-
 “ tions and arguments, it was resolved by
 “ the House, that all such persons that
 “ have not been duly returned into this
 “ present Parliament, as in lieu and place of
 “ others absent, being either sick, or em-
 “ ployed in her Majesty’s service, or other-
 “ wise, and not dead, shall be for this time
 “ holden excused of their attendance, and
 “ of their sitting in this House until this
 “ present time ; but shall, from henceforth,
 “ stand, and be utterly discharged and dis-
 “ abled of their said rooms and places, in
 “ the stead of other such persons not being
 “ dead, unless special order shall be therein
 “ taken by this House to the contrary.
 “ And then perusing the said returns and
 “ defaults, and also the former precedents
 “ of this House in like cases, it is adjudged
 “ and ordered by this House, that Edward
 “ Flowerden, Esq; Serjeant at Law, and
 “ who, the last former Session of this pre-
 “ sent Parliament, did stand and appear a
 “ Burgefs of Castle-Rising in the County

“ of Norfolk, and was nevertheless returned
 “ into this present Session of Parliament a
 “ Citizen for the City of Norwich, in lieu
 “ and place of Thomas Beaumont sick,
 “ shall still stand and remain in his place,
 “ for Castle-Rising, and not for the said
 “ City of Norwich : And for as much also
 “ as it is now credibly informed to this
 “ House, by John Aldrich, Gentleman, one
 “ of the Citizens returned for the City of
 “ Norwich ; and also by Sir Roger Wood-
 “ house, Knight, one of the Knights for
 “ the said County of Norfolk ; and also by
 “ Edward Grimstone, Esq; one of the Bur-
 “ gesses for the Town of Ipswich, in the
 “ County of Suffolk, that the said Thomas
 “ Beaumont is impotent, and incurably sick
 “ and diseased, it was (at the earnest motion
 “ of the said John Aldrich, made to this
 “ House, for another Citizen to be chosen and
 “ returned for the said City of Norwich,
 “ in the place and stead of the said Thomas
 “ Beaumont) ordered and resolved by this
 “ House, that a warrant be made forthwith,
 “ by

“ by this House, to the Clerk of the
 “ Crown-office, in the Chancery, for the
 “ directing of a new Writ for the chusing
 “ and returning of another Citizen of the
 “ said City of Norwich, in the place and
 “ stead of the same Thomas Beaumont,
 “ accordingly.

“ And for as much as Hugh Graves, one
 “ of the Citizens for the City of York, did,
 “ the last former Sessions of this present
 “ Parliament, move the House and make
 “ request, that, by order of this House,
 “ another Citizen might be chosen and
 “ returned for the said City of York,
 “ in lieu and stead of Gregory Peacocke,
 “ his fellow Citizen, being then, and yet
 “ still, incurably sick and diseased; and for
 “ that also, that Robert Askewith is already
 “ returned, and hath attended this pre-
 “ sent Session, in the room and place of
 “ the said Gregory Peacocke, it was now
 “ ordered and resolved by this House, that
 “ the said Robert shall stand and remain
 d 4 “ still

“ still as a Citizen for the said City of York,
 “ in the lieu and place of the said Gregory
 “ Peacocke, according to the return thereof
 “ made.

“ It was also, upon further consideration of
 “ the said returns and defaults, ordered and
 “ resolved, that Thomas Fleming, Gentle-
 “ man, being returned into this Session,
 “ and appearing in the place of James
 “ Dalton, one of the Burgeses for Kingston
 “ upon Hull, being incurably sick and
 “ diseased, shall stand and continue, accord-
 “ ing to the return in that behalf already
 “ made.

“ And that John Fawcher, likewise re-
 “ turned a Burgess for the said Town of
 “ Kingston upon Hull, in the lieu and stead
 “ of James Clerkson, sick ; and Samuel
 “ Cox, Esq; returned a Burgess for the
 “ City of Rochester, in the County of Kent,
 “ in the room and place of William Par-
 “ tridge, Esq; being sick ; Sir William Drury,
 “ Knight,

“ Knight, returned a Burgeſſ for Caſtle-
 “ Riſing, in the County of Norfolk, in the
 “ room and place of Edward Flowerden,
 “ Eſq; being ſick ; Richard Mollineux,
 “ Eſq; returned a Burgeſſ for the Town
 “ of Wigan, in the County of Lancaſter,
 “ in the room and place of Edward Fitton,
 “ Eſq; being in the Queen’s Maſteſty’s ſer-
 “ vice ; Fulke Greville, Eſq; returned a
 “ Burgeſſ for the Town of Southampton,
 “ in the room and place of Sir Henry Wal-
 “ lop, Knight, being in the Queen’s Ma-
 “ jeſty’s ſervice ; and Richard Herbert, Eſq;
 “ returned a Burgeſſ for the Town of
 “ Montgomery, in the room and place of
 “ Rowland Pugh, Eſq; ſuppoſed to be dead,
 “ but yet known to be in plain life, ſhall
 “ be forthwith amoved from their ſaid
 “ places ; and the ſaid James Clerkſon, Ed-
 “ ward Flowerden, Eſq; Edward Fitton,
 “ Eſq; William Partridge, Eſq; Sir Henry
 “ Wallop, Knight, Rowland Pugh, Eſq;
 “ and every of them, ſhall ſtand and con-
 “ tinue for their ſaid ſeveral rooms and
 “ places,

“places, notwithstanding any such causes
 “of sickness, the Queen’s Majesty’s service,
 “or supposed allegation of being dead.

“And it is also further agreed upon and
 “resolved by this House, that during *the*
 “*time of sitting of this Court*, there do not,
 “at any time, any Writ go out for the
 “chusing or returning of any Knight, Citi-
 “zen, Burgefs, or Baron, without the War-
 “rant of this House first directed for the
 “same to the Clerk of the Crown, *accord-*
 “*ing to the ancient Jurisdiction and Authority*
 “*of this House, in that behalf accustomed and*
 “*used.*”

In 1586, the 28th and 29th of Queen
 Eliz. Writs issued for calling a new Parlia-
 ment, dated the 15th of September: in
 consequence whereof Mr. Farmer and Mr.
 Gresham were duly chosen and returned
 Knights for the County of Norfolk.—This
 Election was on the 26th of September.—
 After this, and before the actual Meeting of
 the

the Parliament (which had been prorogued), upon a suggestion being made in Chancery, that this first Writ was either not executed, or irregularly executed, another Writ for the Election of two Knights for that County issued.—This last Writ was dated the 11th of October; and by virtue thereof, Mr. Gresham and Mr. Heydon were returned as duly elected.—This last Election was on the 24th of October.

The Parliament met on the 29th of Oct. and on the 31st the Commons presented their Speaker, and then adjourned to the 3d of November.—On one of these days, notice was taken in the House, of the irregular Election of the Knights for the County of Norfolk; and there appeared an intention in the House of taking the matter into consideration, and of inquiring into the merits of it.

The Court took the alarm, and insisted that the Merits of the Election and Return were
 matters

matters the House of Commons had no right or business to inquire into; and that it only belonged to the charge and office of the Lord Chancellor, from whose Court the Writs for the said Elections issued, and were thither returned; and the House of Commons received a very severe reprimand, in the Queen's name, for their presuming to interfere in it: notwithstanding which, they persisted in their right, as will appear from the following Extracts from Sir Simonds Dewes's Journal of that Parliament.

“ * On Thursday the third of November,
 “ Mr. Speaker shewed unto the House, that
 “ he received commandment from my Lord
 “ Chancellor from her Majesty, to signify
 “ unto them, that her Highness was sorry
 “ this House was troubled the last sitting
 “ thereof, with the matter, touching the
 “ chusing and returning the Knights for the
 “ County of Norfolk: a thing in truth im-
 “ pertinent for this House to deal withal,

* Dewes's Journal, p. 392, 393.

and

“ and only belonging to the charge and
 “ office of the Lord Chancellor, from
 “ whence the Writs for the same Elections
 “ issued out, and are thither returnable again:
 “ And also that her Majesty had appointed
 “ the said Lord Chancellor to confer therein
 “ with the Judges. And so thereupon exa-
 “ mining the said Returns, and the Sheriff,
 “ touching the matter and circumstances of
 “ his proceedings in the said Elections,
 “ to set down such course for making the
 “ true Return, as to justice and right shall
 “ therein appertain.

“ * On the 8th Nov. fundry Speeches being
 “ had touching the Liberties of the House,
 “ and of the preservation of the same Liber-
 “ ties, about the matter of the examination
 “ of the Returns of the Knights for the
 “ County of Norfolk; and some arguing
 “ one way, and some another, the time so
 “ passing away, the House rose, and nothing
 “ then resolved thereof at all.

* Dewes's Journal, p. 395.

“ On

“ * On the 9th Nov. after some speeches
 “ and motions had, touching the Liberties
 “ of this House in the examination and
 “ judgement of the Returns for the Knights
 “ for the County of Norfolk ; it is upon the
 “ question resolved, that Mr. Comptroller,
 “ Mr. Treasurer, Mr. Recorder of London,
 “ Mr. Serjeant Snagg, Mr. Cromwell, Sir
 “ William Winter, Sir Henry Knyvett, Mr.
 “ Thomas Knyvett, Mr. Alford, Mr. Drew,
 “ Mr. Harris, Sir William Moore, Mr.
 “ Morrice, Mr. Sandes, and Mr. Sanders, be
 “ appointed Committees by this House, to
 “ examine the state and circumstances of the
 “ said Returns, and to meet for that purpose
 “ Tomorrow in the Afternoon at two of the
 “ clock, in the Exchequer Chamber ; and
 “ also that Mr. Watson, Clerk of the Crown
 “ in the Chancery, and also the Under-
 “ Sheriff of the County of Norfolk, do then
 “ and there attend upon the said Committees,
 “ in the exercise of the said examinations ac-
 “ cordingly: and further that thereupon the

* Dewes's Journal, p. 396, 397.

“ said Committees, or some of them, do sig-
 “ nify unto this House, upon Friday next in
 “ the Forenoon, the state of the said matter,
 “ as they shall find it upon the said examina-
 “ tion, to the end this House may then take
 “ such further course therein, as in that be-
 “ half shall be thought meet and convenient.

“ This day report was made by Mr.
 “ Thomas Cromwell, that eleven of the
 “ Committees appointed by this House to
 “ examine the state and circumstances of the
 “ Writs and Returns made of the Knights
 “ for the County of Norfolk, had according
 “ to their Commission met Yesterday, and
 “ that the Clerk of the Crown had brought
 “ before them as well the Writs as their Re-
 “ turns; upon view whereof it appeared, that
 “ two several Writs had issued out of the
 “ Chancery, directed to the Sheriff of Nor-
 “ folk, for the choice of the Knights of the
 “ Shire for that County; the first dated the
 “ 15th day of September, the second dated
 “ the 11th day of October; the first ap-
 “ peared

appeared by the Return to have been executed the 26th day of September, the second executed the 24th of October, which was after the Parliament was to have had its beginning. By the first Writ Mr. Thomas Farmer and Mr. Gresham were returned to be chosen Knights; by the second Mr. Christopher Heydon and the said Mr. Gresham. That by the examination of the Clerk of the Crown, it appeared unto them, that the first Writ with the Return was brought and offered unto them by the Under-Sheriff the 15th day of October, when as the Parliament was to have had its beginning, and that with that Writ the Burgeses for the Boroughs of the County were also brought, which then notwithstanding he received not. That after, about the 29th day of October, both the said Writs were delivered unto him. It was further declared, that the said Mr. Heydon with his council, and the said Mr. Farmer in person, and also the Under-

“ Under-Sheriff had been before the Com-
 “ mitees; that Mr. Gresham, as being re-
 “ turned by both the Writs, had not been
 “ before them; that they had examined
 “ Mr. Heydon and his Council, what ex-
 “ ceptions they could take to the execution
 “ of the first Writ: who then alledged
 “ two causes; the one, that due summons
 “ was not given to the freeholders of the
 “ shire; the other, that proclamation was
 “ not duly made: that thereupon they ex-
 “ amined the Under-Sheriff, who, in their
 “ presence, affirmed, that the Writ was de-
 “ livered to the High-Sheriff on the Satur-
 “ day, which he received on the Sunday,
 “ the County-day being on Monday follow-
 “ ing; on which day he was bound by
 “ law to execute his Writs; by which
 “ means he had not leisure either to sum-
 “ mon many, or any day left by which
 “ he might, by proclamation, notify it in
 “ the County. That, on the said Mon-
 “ day, between eight and nine of the clock,
 “ three solemn O Yes were made, and
 “ the

“ the Queen’s Writ publicly read, and
 “ all circumstances used which the law
 “ required : Wherein he was the more
 “ careful, for that it was commonly bruited,
 “ that there would be variance about the
 “ Election. That the Election was so ex-
 “ pected in the Country, that, by his esti-
 “ mation, there were three thousand per-
 “ sons at the same ; and that Mr. Farmer
 “ had the voices without denyal ; that Mr.
 “ Justice Windham, Sir Thomas Knyvett,
 “ Sir Nicolas Bacon, Sir Henry Woodhouse,
 “ and divers other Justices of the Peace,
 “ Esquires, and Gentlemen of great calling,
 “ were at the Election, and gave their
 “ assents to the same, and set their hands
 “ and seals to the indenture. Upon con-
 “ sideration of the whole matter, it ap-
 “ peared to them, that the first Writ and
 “ return were, in matter and form, perfect
 “ and duly executed : the second Writ,
 “ they thought, could not be available ;
 “ besides, that the precedent was perilous
 “ for the time to come, in respect that it
 “ appointed

“ appointed two others to be chosen. The
 “ effect of the Writ besides not observed;
 “ for that Mr. Gresham, one of the same,
 “ was chosen by the first Writ. They
 “ further declared, that they understood
 “ that the Lord Chancellor and divers of
 “ the Judges, having examined the matter,
 “ were of the same opinion. He declared
 “ further, that one of the Committees had
 “ moved, that two of the Committees
 “ might have been sent to understand of
 “ my Lord Chancellor what he had done
 “ in the matter, which the rest of the
 “ Committees thought not convenient;
 “ first, in respect they were satisfied therein,
 “ by divers of their Committees; and, also,
 “ for that they thought it prejudicial to
 “ the Privilege of the House, to have the
 “ same determined by others than such as
 “ were members thereof. And though they
 “ thought very reverently of the said Lord
 “ Chancellor and Judges, and thought
 “ them competent judges in their places;
 “ yet, in this case, they took them not for

“ Judges in Parliament in this House. And
 “ thereupon required, that, if it were so
 “ thought good to the House, Mr. Farmer
 “ and Mr. Gresham might take their Oaths,
 “ and be allowed of by force of the first
 “ Writ, as allowed by the censure of this
 “ House, and not as allowed of by the
 “ said Lord Chancellor and Judges; which
 “ was agreed unto by the whole House,
 “ and ordered to be entered accordingly.

“ This Case being set down touching the
 “ Election of Knights for the County of
 “ Norfolk, containeth in it many useful
 “ and curious points. The Case was singly
 “ this :

“ The Sheriff of Norfolk receives a Writ
 “ touching the Election of two Knights for
 “ that County, but two days before the
 “ next County-day, in which he is bound
 “ by law to see it executed: by reason of
 “ this shortness of time, he could neither
 “ summon many freeholders, nor make due
 “ procla-

“ proclamation in the County, any one day
 “ before the said Election. The Sheriff,
 “ notwithstanding, on the said County-day,
 “ proceeds to the execution of the said
 “ Writ; and Mr. Farmer and Mr. Gresham
 “ are duly chosen, according to all points
 “ and circumstances in such like case re-
 “ quired; there being not only a great ap-
 “ pearance of freeholders, but divers also of
 “ the most eminent gentlemen of the said
 “ County; who, after they had given their
 “ voices to the said Election, did also set
 “ their hands and seals to the indenture of
 “ the same, in that case usual. After which,
 “ a second and new Writ is delivered to
 “ the said Sheriff, for a new Election to be
 “ made, which is in all points executed
 “ without any the least colour of misfe-
 “ sance, and by it Mr. Heydon and Mr.
 “ Gresham (being one of the two first that
 “ had been before elected) were chosen, and
 “ the indenture of their said Election, toge-
 “ ther with the Writ, were delivered in
 “ unto the Clerk of the Crown, together

“ with the Writ and Indenture of the former Election. After which, the Lord Chancellor and the Judges, meeting about it, do resolve, that the first Writ was well executed, the first election good, and the second absolutely void.

“ In which case, these points following were resolved by the whole body of the said House :

“ *First*, That the said first Writ was duly executed, and the Election good, and the second Election absolutely void.

“ *Secondly*, That it was a most perilous precedent, that, after two Knights of a County were duly elected, any new Writ should issue out for a second Election, without order from the House of Commons itself.

“ *Thirdly*,

“ *Thirdly*, That the discussing and adjudg-
 “ ing of this, and such like differences, only
 “ belonged to the said House.

“ *Fourthly*, That though the Lord Chan-
 “ cellor and Judges were competent judges
 “ in their proper courts, yet they were not
 “ in Parliament.

“ *Fifthly*, That it should be entered in
 “ the Journal Book of the House, that the
 “ said first Election was approved to be
 “ good, and the said Knights then chosen
 “ had been received and allowed as mem-
 “ bers of the House, not out of any respect
 “ the said House had, or gave, to the reso-
 “ lution of the Lord Chancellor and Judges
 “ passed, but merely by reason of the re-
 “ solution of the House itself, by which the
 “ said Election had been approved.

“ *Sixthly*, and lastly, That there should be
 “ no message sent to the Lord Chancellor,

“ not so much as to know what he had
 “ done therein; because it was conceived
 “ to be a matter derogatory to the power
 “ and privilege of the said House.

“ * On Friday the 11th day of Nov. 1586,
 “ Mr. Cromwell, one of the Committees for
 “ the examination of Writs and the Returns
 “ for the Knights of the County of Nor-
 “ folk, maketh report, that Yesterday eleven
 “ of them met, and upon view of the dates
 “ of the same Writs and Returns, and upon
 “ conference by them then also had with the
 “ Clerk of the Crown, and Under-Sheriff of
 “ Norfolk, touching the manner of execu-
 “ ting the same Writs and Returns, and
 “ hearing all such parties grieved, with their
 “ learned Council, as repaired to them for
 “ that purpose; they do find, the first Writ
 “ and Return both in manner and form was
 “ perfect, and also duly executed; and the
 “ second Writ not so: and that besides it
 “ might also be a perilous precedent for the

* Dewes' Journals, p. 398, 399.

“ time

“ time to come, to the liberty and privilege
 “ of this House, to admit or pass over, any
 “ such Writ or Return, in such manner and
 “ course as the said second Writ carrieth.
 “ And further declared, that they understood
 “ by the said Clerk of the Crown, that the
 “ Lord Chancellor had then lately com-
 “ manded him to receive and accept the said
 “ first Writ and Return, by the which Mr.
 “ Farmer and Mr. Gresham were elected and
 “ returned; as the Writ rightly and duly
 “ executed. And did also understand by
 “ Mr. Recorder, one of the said Committees,
 “ that Sir Edmund Anderson, Lord Chief
 “ Justice of the Court of Common Pleas,
 “ had also shewed him, that the Lord Chan-
 “ cellor and the Judges had resolved, that
 “ the said first Writ should be returned as
 “ that, which was in all parts duly and
 “ rightly executed, and not the second. And
 “ shewed further, that one of the Commit-
 “ tees assenting with the residue in opinion
 “ of the validity of the said first Writ and
 “ Return, and of the invalidity of the se-
 “ cond;

“ cond; and also in resolution that the ex-
 “ planation and ordering of the case, as it
 “ standeth, appertaineth only to the censure
 “ of this House, moved notwithstanding in
 “ the Committee, that two of the Commit-
 “ tees might be sent to the said Lord Chan-
 “ cellor, to understand what his Lordship
 “ had done in the matter; which the residue
 “ thought not convenient; first, for that they
 “ were sufficiently satisfied therein by divers
 “ of themselves, but principally in respect
 “ they thought it very prejudicial and inju-
 “ rious to the privileges and liberties of this
 “ House, to have the Cause decided, in any
 “ sort, by any others than only by such as
 “ are members of this House; and that al-
 “ beit they thought very reverently (as be-
 “ cometh them) of the said Lord Chancellor
 “ and Judges, and know them to be com-
 “ petent judges in their places: yet in this
 “ case they took them not for Judges in
 “ Parliament in this House. And so further
 “ required, that (if it were so thought good)
 “ Mr. Farmer and Mr. Gresham might take
 “ their

“ their oaths, and be allowed of, and re-
 “ ceived into this House, by force of the said
 “ first Writs; as so allowed and admitted
 “ only by the censure of this House, and
 “ not as allowed of by the said Lord Chan-
 “ cellor and Judges. Which was agreed
 “ unto accordingly by the whole House, and
 “ so ordered also to be set down and entered
 “ by the Clerk.

“ Mr. Treasurer, one of the said Commit-
 “ tees in the said examination, sheweth for
 “ his part, his privity and assent unto the
 “ whole recited course of proceeding in the
 “ said Committee, as it hath been declared
 “ by Mr. Cromwell; and that before him-
 “ self, the said Mr. Farmer hath already pro-
 “ nounced and taken his oath; shewing fur-
 “ ther withal, that in the Committee he
 “ moved, that some might be sent to the
 “ Lord Chancellor, to know what his Lord-
 “ ship had done in the matter, which he
 “ then thought, and yet still doth think, ne-
 “ cessary to have been done, as one of the
 “ circum-

“ circumstances of the said examinations,
 “ and not for want of any satisfaction other-
 “ wise, but only in respect of the orderly
 “ proceeding in the commission unto them
 “ by this House, tending to circumstances
 “ of the matter, of which he thinketh one
 “ to have been to send as aforesaid unto the
 “ Lord Chancellor, though they were re-
 “ solved by themselves amongst themselves
 “ before.

“ Mr. Recorder of London making a large
 “ and plentiful discourse of the ancient Li-
 “ berties and Privileges of this House, fur-
 “ nished with recital of sundry precedents
 “ and examples, and lastly coming down to
 “ the matter in hand, sheweth, that Sir
 “ Edmund Anderson, Knight, Lord Chief
 “ Justice of the Common Pleas, told him
 “ this morning, that the said Lord Chancel-
 “ lor and the Judges had resolved, that the
 “ said first Writ ought to be returned, and
 “ had so given orders to the Sheriff, and
 “ Clerk of the Crown; and that he there-
 “ upon

“ upon answered the said Sir Edmund
 “ Anderson again, that the censure thereof
 “ belonged unto this House, and not unto
 “ them; and that he for his part, would take
 “ no notice thereof at their hands of their so
 “ doing, but only by way of instructions,
 “ and not otherwise. And so concluded,
 “ with the allowance of the good course and
 “ order of this House, in setting down and
 “ entering the said judgement accordingly,
 “ as before.”

In the 31 Eliz. A^o 1588, the House of
 Commons, upon the report of the Com-
 mittee of Privileges and Elections, in rela-
 tion to one of the Barons for the Port of
 New Rumney, not certified to the House by
 the Clerk of the Crown, determined in fa-
 vour of the person elected by the Town.
 There are no Journals of this Parliament
 printed by Order of the House. The fol-
 lowing account of this Case is given in Sir
 Simonds Dewes's Journal *.

* Dewes' Journal, p. 438.

“ Mr. Recorder moved touching the want
 “ of one of the Barons of New Rumney in
 “ the County of Kent, not returned into this
 “ House; but yet (he said) duly elected, as
 “ he was informed, under the seal of the Cor-
 “ poration of the said Town of New Rum-
 “ ney; and further shewing, that he thought
 “ the precedent thereof might tend to the
 “ prejudice both to the liberties, and also to
 “ the service of this House, and prayed con-
 “ sideration of this House therein. Where-
 “ upon, after sundry other speeches and ar-
 “ guments to the like effect by others, it was
 “ at last ordered, that the state of the Case
 “ should be further examined by the former
 “ Committees of this House, appointed for
 “ such cases of Returns, as should happen to
 “ fall out during this present Session of Par-
 “ liament; whose names then being read by
 “ the Clerk, they were appointed to meet at
 “ the Rolls this present day, at two of the
 “ clock in the afternoon.

“ On

“ On Monday * the third of March, Mr.
 “ Cromwell, one of the said Committees,
 “ sheweth, that the said Committees had
 “ met about the same, according to the
 “ commission of this House; and so shew-
 “ ing his own opinion, it was, after fundry
 “ other speeches, resolved in the end, upon
 “ the question, that he that was chosen
 “ by the said town, should be received into
 “ this House, as a member thereof accord-
 “ ingly.”

“ 4 Nov. 1601 †, Mr. Serjeant Harris
 “ moved the House, that, in respect great
 “ danger and inconvenience might grow,
 “ by the want of any one particular mem-
 “ ber of this House, therefore, he thought
 “ good to certify, the want of a Knight for
 “ Rutlandshire; for he said, that Sir An-
 “ drew Nowell, being Sheriff of the County,
 “ had returned himself, jointly with Sir

* Dewes's Journal, p. 441.

† Ib. p. 624, 625.

“ John

“ John Harrington, to be Knight, which
 “ he took in law to be a void return; be-
 “ cause it is against the exprefs words of
 “ the Writ, *Ita quod neque tu, neque aliquis*
 “ *Vicecomes alterius Comitatus, eligatur, &c.*
 “ which he thought good to move the House
 “ in referring it to their confiderations; and
 “ prayeth, that the record may be sent for
 “ from the Clerk of the Crown; for, faith
 “ he, we know in law, that a man cannot
 “ make an indenture to himself and the
 “ County, for there are required two per-
 “ sons.

“ To which Sir Edward Hobby replied,
 “ that, notwithstanding this, the House
 “ might well receive him; and he vouched
 “ a precedent in the 31st of this Queen,
 “ when a Writ was directed to the Bailiffs
 “ of Southwark to return Burgeffes, and
 “ they returned themselves, and were re-
 “ ceived. But if we do not receive him,
 “ another question will grow, Whether a
 “ Warrant must go from the Speaker to
 “ elect

“ elect a new Knight, or from the Clerk of
 “ the Crown, to which it was agreed (*per*
 “ *omnes*) that from the Speaker.

“ Then Mr. Wiseman of Lincoln’s Inn
 “ stood up, and shewed the necessity of
 “ having all our members, because other-
 “ wise the body is but maimed; as also
 “ how dangerous a precedent this would be,
 “ if it might pass with the applause of this
 “ House; and, lastly, the reason of putting
 “ in the aforesaid special words in the Writ,
 “ because it must be necessarily intended,
 “ that they being so great officers, having
 “ so great a charge, and their presence in
 “ their countries so requisite, should not be
 “ returned: Besides, for that time they
 “ are the chief men of the Shire. Free-
 “ holders, peradventure, for favour sake,
 “ would rather chuse him, than men far
 “ more sufficient for that place.

“ Mr. Carey moved, Whether, if it were
 “ with his will, he should be punished by
 “ fine, or otherwise.

f

“ Sir

“ Sir John Harrington said, of his own
 “ knowledge he knew him to be very un-
 “ willing : but the freeholders made answer,
 “ they would have none other.

“ Mr. Speaker said, it could not be in-
 “ tended against his will, for his hand is to
 “ the Indenture ; but he moved, Whether
 “ it should be intended, that Sir Anthony
 “ Nowell were *una & eadem persona*, or no ;
 “ and though it were, yet whether they
 “ could take notice thereof, not being cer-
 “ tified out of the Chancery. To which
 “ all the House said, there was no other of
 “ the name.

“ Then Mr. Comptroller stood up and
 “ moved, that in respect the return was joint,
 “ and that they did disallow Sir Anthony
 “ Nowell, he desired to be resolved of the
 “ learned Masters of the Law in this House,
 “ whether all the returns were insufficient,
 “ and

“ and so Sir John Harrington to be excluded.

“ To which the whole House said, No.

“ Mr. Serjeant Harris said, No; because
 “ the Warrant is affirmative to chuse any
 “ but the Sheriff, who is excepted by special
 “ Words; so that the return of the other is
 “ warranted, but that of himself is void.

“ Sir Edward Hobbie answered and said,
 “ Nay then, Mr. Serjeant, if you stand on
 “ that, I think, there are few Knights in this
 “ House lawfully chosen; for the words
 “ of the Writ and Statute are, that he must
 “ be commorant within the County, which
 “ but few are. To which not one word
 “ was answered, and that clause was hushed
 “ up.

“ Mr. Speaker said, Well, I will put it
 “ to the question, which shall be twofold;
 “ one, Whether the return be void; the
 “ other, Whether a new Warrant shall be
 “ sent forth. To which, being twice moved,

“ all cried, Aye, Aye; not one man said,
“ No.

“ Sir Edward Hobbie said, Mr. Speaker,
“ the warrant must go from yourself; for,
“ in the twenty-seventh year of this Queen,
“ when Parrie was Burgess for Queenbo-
“ rough, a new Election was made, and the
“ Warrant was sent from the Speaker.

“ Note, That this resolution of the House
“ is directly contrary to a former precedent
“ agreed on by the House of Commons,
“ upon Friday, the 21st day of February,
“ in the Parliament in the 31st year of the
“ reign of Q. Eliz. Ann. Dom. 1588, 1589,
“ where Mr. St. Poole, being both Knight
“ for the County of Lincoln and Sheriff
“ of the same, was, notwithstanding, al-
“ lowed to retain his place in the said House
“ as a member thereof, and had only li-
“ cence given unto him to depart into the
“ said County about the business of the said
“ Sheriffwic, in no other form or manner
“ than

“ than is vouchsafed of course to the
 “ Members of the said House, upon any
 “ urgent occasions by them alledged, re-
 “ quiring their absence for some time, be it
 “ longer or shorter; where other precedents
 “ also to this purpose are vouched; and
 “ yet, perhaps, both the said precedents
 “ may stand good and be reconciled, with
 “ this difference, that where any man is
 “ first Sheriff of some County, and then
 “ elected a Knight of the same, or a Citi-
 “ zen, Burgeſs, or Baron, of any City,
 “ Borough, or Cinque-Port of the same;
 “ that, in this case, his Election is void;
 “ because it must of necessity follow, as in
 “ this case of Sir Andrew Nowell it did,
 “ that he must return himself, which can-
 “ not be good in law. But, where a man
 “ is first elected a member of the House of
 “ Commons, be it Knight, Citizen, Bur-
 “ geſs, or Baron, and is afterwards made
 “ Sheriff of some County, here his first
 “ Election standeth good; as it should seem
 “ also it doth, although he may be first

“ made a Sheriff of some County; and be
 “ afterwards elected a Knight, Citizen, Bur-
 “ gess, or Baron of, and in, some other
 “ Shire or County. And the reason of all
 “ is plain, in respect, that, in all these latter
 “ cases, the return cannot be made by him-
 “ self, but by the Sheriff of the County
 “ where he is chosen. This only holds
 “ good in the case of the Knights of the
 “ Shire.”

“ 25 June, 1604 *, this day Mr. Francis
 “ Moore moved to know the opinion of the
 “ House, Whether a Mayor of a Town,
 “ &c. might lawfully be returned and ad-
 “ mitted to serve as a member here; and
 “ alledged a case in 38 H. VIII, in Brook’s
 “ Abridgement, where it is reported to be
 “ admitted in the Commons House of Par-
 “ liament, that if a Burgess of the Parlia-
 “ ment be made a Mayor of a Town, hav-
 “ ing therein a judicial jurisdiction, that
 “ that is a sufficient cause to send forth a

* Journal of the House of Commons, Vol. I. p. 245.

“ new Writ for a new choice. Hereupon,
 “ by some, it was answered, that they con-
 “ ceived Mayors to be within the equity
 “ of the Statute of the 23d of Hen. VI,
 “ inhibiting the Election of Sheriffs, &c.
 “ —By some, the great inconvenience was
 “ urged, that Mayors, to whom the Writs
 “ were directed, should be admitted Bur-
 “ gesses, seeing, for the more their power
 “ was such, as they might procure them-
 “ selves to be chosen. By others, a dif-
 “ ference was taken, if the Mayor Elect
 “ procure himself to be chosen, then, with
 “ good reason, doth he stand incapable;
 “ but, if he be freely, and indifferently
 “ chosen, or elected Burgeſs of another
 “ Borough, whereof he is not Mayor, then
 “ he may lawfully be returned, and fitly
 “ admitted to ſerve as a Member of this
 “ Houſe. By a third the point was thus
 “ moderated; that for ſuch Members of this
 “ Houſe as, upon the returns, did appear
 “ to be Mayors, new Writs might preſently
 “ iſſue, by warrant, under the hand of Mr.

“ Speaker, in the name of the said House,
 “ for a new Election, according to the usual
 “ form ; intimating withal, that, before the
 “ execution of the said Writ, the time of
 “ their mayoralty would expire, and then
 “ the same Members might stand and serve,
 “ without exception, at the next Session of
 “ the present Parliament.

“ Howbeit, upon the whole matter, it
 “ was resolved and ordered, and the Clerk
 “ of the said House commanded to enter it
 “ accordingly, that from, and after, the
 “ end of this present Parliament, no Mayor
 “ of any City, Borough, or Town-corporate,
 “ should be elected, returned, or allowed to serve, as a Member of this House;
 “ and if it did appear, that any Mayor
 “ was returned a Burgess, that presently a
 “ new Writ should be awarded for the
 “ choice of another in the room and place
 “ of the said Mayor : And this to continue
 “ as an Act and Order of this House for
 “ ever.

“ If a Mayor of a Town be chosen Sheriff of a County, then he may serve.”

In the year 1604 (1 James I), happened the famous case of Sir Francis Goodwin, who was returned one of the Knights for the County of Bucks; but, being an outlaw, the Clerk of the Crown refused to receive the return, and another Election was made, when Sir John Fortescue was returned. This matter being moved in the House of Commons the first day the Parliament met *, the 22d of March, 1603, the Clerk of the Crown was directed to attend the House, with all the instruments relative to those Elections.

On the 23d March, 1603, this case having been fully examined into and debated, it was resolved, upon the question, “ That Sir Francis Goodwin was lawfully elected and returned one of the Knights of the

* Journal, Vol. I. p. 149.

“ said

“ said County, and that he ought to be admitted and received a Member of that House*.”

On the 27th of March, 1604, the Lords having sent a message to the Commons, desiring to have a conference upon this case, the Commons resolved †, “ that they would not confer thereupon ; they conceiving, that it did not stand with the honour and order of that House to give account of any of their proceedings or doings.”— The Lords replied, that the King, having been made acquainted with this case, “ conceived himself engaged and touched in honour, that there might be a conference upon it between the two Houses.” Whereupon, the House of Commons resolved to attend his Majesty on this subject the next day.

The 29th of March, 1604 ‡, the Speaker related to the House what had passed upon

* Journals, vol. I. p. 151. † Ibid, p. 156, ‡ Ib. p. 158.
the

the attendance on the King the day before, on the case of Sir Francis Goodwin; when the King had charged them, that, “first, “the course already taken should be truly “reported; secondly, that they should debate and resolve amongst themselves; “thirdly, that they should admit of a conference with the Judges; and fourthly, “that they should make report of all the “Proceedings unto the Council.”

The 30th of March *, upon this matter being fully debated in the House, it was resolved, “that the reasons of their precedent “resolution touching the return, admittance, “and retaining of Sir Francis Goodwin, as a “Member of that House, should be set down “in writing;” and a Committee was appointed for that purpose.

The 3d of April †, the Committee presented to the House the said reasons drawn

* Journal, p. 160.

† Ibid, p. 162.

up in the form of a petition to the King, stating the case fully and at large: which reasons were resolved to be communicated to the Lords; and were afterwards presented to his Majesty.

On the 5th of April *, the Speaker, having been commanded to attend upon the King, brought a Message from his Majesty to the House, to this effect; “ That he had
 “ received a parchment from the House; but
 “ whether it were an absolute resolution or
 “ reason to give him satisfaction, he knew
 “ not: he thought it was rather intended
 “ for his satisfaction. His Majesty protested
 “ by that love he bare the House, as his
 “ loving and loyal subjects, and by the faith
 “ he did ever owe to God, he had as great a
 “ desire to maintain their Privileges, as ever
 “ Prince had, or as they themselves. He
 “ had seen and considered of the manner and
 “ the matter: he had heard his Judges and
 “ Council: and that he was now distracted

* Journal, Vol. I. p. 166.

“ in judgement. Therefore, for his further
 “ fatisfaction, he desired and commanded, as
 “ an absolute King, that there might be a
 “ conference between the House and the
 “ Judges; and that, for that purpose, there
 “ might be a select Committee of grave and
 “ learned persons, out of the House: that his
 “ Council might be present, not as umpires
 “ to determine, but to report indifferently on
 “ both sides.”

Upon fully considering this Message, it
 was resolved, that a Committee should be
 appointed to confer with the Judges; and
 that a Petition should be presented to his
 Majesty, to hear, moderate, and judge the
 case himself.

On the 11th of April*, Sir Francis
 Bacon reported to the House the substance
 of what had passed at the conference, in the
 presence of his Majesty and his Council.
 Wherein the King himself had proposed,

* Journal, Vol. I. p. 168.

“ that

“that neither Sir John Fortescue nor Sir
 “ Francis Goodwin might have place.”
 Whereupon it was resolved by the House,
 upon the question, that Sir John Fortescue
 and Sir Francis Goodwin should both be se-
 cluded; and that a warrant should issue for
 a new Election.

On the 13th of April*, a warrant issued
 accordingly, reciting, “ that the said Sir
 “ John Fortescue and Sir Francis Goodwin
 “ had been severally elected, and returned,
 “ Knights of the Shire for the County of
 “ Bucks; but that upon deliberate consulta-
 “ tion, *and for some special causes moving the*
 “ *Commons House of Parliament*, it was or-
 “ dered and required by the said House, that
 “ a Writ should be forthwith awarded for a
 “ new Election of another Knight for the
 “ said Shire.”

From the above state of this Case it will
 appear, that the King in a manner com-

* Journal, Vol. I. p. 171.

pelled

pelled the House of Commons to yield up to him, the right of determining of the qualifications of the Members of that House; and to vacate and annul, on the 11th of April, an express resolution of their own, made the 23d of March preceding.

The conclusion of this business, in the manner above stated, was a bitter draught to the House of Commons, who considered their Privileges to be essentially wounded by this intervention of the Crown. A select Committee was soon after appointed to take this, amongst other grievances, into their consideration, who on the 20th of June, 1604*, presented to the House *The Form of an Apology or Satisfaction concerning their Privileges; addressed To the King's Most Excellent Majesty, from the House of Commons assembled in Parliament.*

* This *Apology* is very imperfectly entered in the Journal, but is printed by Sir M. Hale in his *Treatise on the Original Power and Jurisdiction of Parliaments*, p. 206, &c. and also in Petyt's *Jus Parl.* p. 225.

In

In this apology is the following passage relative to the above Case; "For the matter of Sir Francis Goodwin, we were, and still are, of clear opinion, that the Freedom of Election was in that action extremely injured: that by the same right it might be at all times in a Lord Chancellor's power to reverse, defeat, reject, and substitute, all the Elections, and Persons elected, over all the realm.

"Neither thought we that the Judges opinion (which yet, in due place, we greatly reverence) being delivered with the Common Law, (which extends only to inferior and standing Courts) ought to bring any prejudice to this High Court of Parliament; *whose power, being above the law, is not founded on the Common Laws, but have their rights and privileges peculiar unto themselves.*

"For

“ For the manner of our proceeding,
 “ which Your Majesty seemed to blame, in
 “ that the second Writ, going out in Your
 “ Majesty’s name, we presumed to censure
 “ it, without first craving access to acquaint
 “ Your Highness with our reasons therein,
 “ we trust our defence shall appear just and
 “ reasonable.

“ It is the form of the Court of Chan-
 “ cery, as of divers other Courts, that
 “ Writs, going out in Your Majesty’s name,
 “ are returned also, as to Your Majesty, in
 “ that Court from whence they issue. How-
 “ beit, no man, therefore, ever repaireth
 “ to Your Majesty’s person, but proceeds
 “ according to law, notwithstanding the
 “ Writ.

“ This being the universal custom of the
 “ kingdom, it was not, nor could be, ad-
 “ mitted, in our conceits, that the diffe-
 “ rence was between Your Majesty and us;
 “ for, God forbid, that between so gracious

“ a Sovereign, and so dutiful and loving
 “ Subjects, any difference should arise. But
 “ it always was, and still is, conceived, that
 “ the controversy was between the Court of
 “ Chancery and our Court (an usual con-
 “ troversy between Courts) about prehem-
 “ nence and privileges; and that the ques-
 “ tion was, *Whether the Chancery, or our*
 “ *House of Commons, were judges of the Mem-*
 “ *bers returned for it.*

“ Wherein, though we supposed the
 “ wrong done to be most apparent, and ex-
 “ tremely prejudicial to the rights and li-
 “ berties of this realm, yet such and so great
 “ was our willingness to please your Majesty,
 “ as to yield to a middle course, proposed by
 “ your Highness, preserving only our privi-
 “ leges by voluntary cession of the lawful
 “ Knight.”

In another part of the same apology is this
 passage. “ We avouch that the House of
 “ Commons is the sole proper judge of the
 “ Return

“ Return of all such Writs, and of the Elec-
 “ tion of all such Members as belong unto
 “ it, without which, the freedom of Election
 “ were not entire; and that the Chancery,
 “ though as a standing Court under your
 “ Majesty, but to send out those Writs, and
 “ receive the Returns, and to preserve them.
 “ Yet the same is done only for the use of
 “ the Parliament, over which, neither the
 “ Chancery, nor any other Court, ever had,
 “ or ought to have, any jurisdiction.”

In the year 1624, the House of Com-
 mons, in the following Reports *, declare it
 to be, “ the ancient and natural undoubted
 “ privilege and power of the Commons in
 “ Parliament, to examine the validity of
 “ Elections and Returns concerning their
 “ House and Assembly, and to cause all un-
 “ due Returns, in that behalf, to be reformed,
 “ and to punish the offenders concerning the
 “ same, according to justice.”

* Page 60.

From that period, the House of Commons hath continued in the full and free enjoyment of the right of judging and determining on the Election and Return of Members to that House. This right is recognized and confirmed by the Act of the 7th and 8th of K. William III, c. 8. § 1. which expressly declares, “ that if any person or persons shall
 “ return any Member to serve in Parliament,
 “ *contrary to the last determination in the House*
 “ *of Commons of the right of Election; that*
 “ such Return shall be adjudged to be a false
 “ Return.” And the Statute of the 2d of K. Geo. II, c. 24. § 4. also declares, “ that
 “ such votes shall be deemed to be legal,
 “ *which have been so declared by the last deter-*
 “ *mination in the House of Commons; which*
 “ last determination concerning any County,
 “ Shire, City, Borough, Cinque Port or
 “ Place, shall be final to all intents and pur-
 “ poses whatsoever, any usage to the con-
 “ trary notwithstanding.”

On the 2d of Feb. 1770, it was moved, in the House of Lords, to resolve, “ that the
 “ House of Commons in the exercise of its
 “ judicature in matters of Election, is bound
 “ to judge according to the law of the land,
 “ and the known and established laws and
 “ customs of Parliament, which is part
 “ thereof.” Which motion, upon the previous question, being rejected;

It was then moved, and resolved, “ that
 “ any resolution of this House, directly or
 “ indirectly impeaching a judgement of the
 “ House of Commons in a matter where
 “ their jurisdiction is competent, final, and
 “ conclusive, would be a violation of the
 “ constitutional rights of the Commons,
 “ tends to make a breach between the two
 “ Houses of Parliament, and leads to general confusion.”

Thus the law upon this subject stood when the Act to regulate the trials of con-

controverted Elections or Returns of Members to serve in Parliament, was made, in the 10th year of the reign of his present Majesty *; which, having received some explanations and amendments the next year, was made perpetual the last Session of Parliament †. This Act, has established a mode of determining cases on controverted Elections, upon a system of perfection scarcely to be equalled. But the salutary and beneficial consequences which this Act has introduced, having been, upon a recent occasion, so universally felt and acknowledged, renders any eulogium upon it both inadequate and unnecessary.

By a perusal of the Cases and Resolutions above stated, deduced from the first determination to be found upon Record, relative to this enquiry, down to the present time, the Reader will be informed, what different powers have, in different times, exercised the right of determining cases on controverted

* Stat. 10 Geo. III. c. 16.

† Stat. 14 Geo. III. c. xv.
Elections;

Elections ; and likewise of the repeated efforts made by the House of Commons, for establishing a right, which has now been happily confirmed to that House, by repeated acts of the whole Legislature.

It now only remains to give some account of the Manuscript from which the following Reports are printed, and of the Motives which induced the Editor to lay them before the Public.

The Manuscript here made use of, lately belonged to Nicholas Hardinge, Esq; who was many years Clerk of the House of Commons; and it appears to have been collated by him with a copy which had formerly belonged to the learned Mr. Hakeville.—After Mr. Hardinge's death it came into the possession of the late Philip Carteret Webb, Esq; by whom it was collated with all the copies of these Reports, which his industry could discover.—One Copy made use of by Mr. Webb, which belonged to the late Earl of Oxford,

was communicated to him by the Earl of Kinnoul. — Another copy, is now in the possession of the Earl of Shelburne. — And a third copy, of a part only of the others, is preserved in the Bodleian Library at Oxford; of which Mr. Webb procured a transcript. — The Copy, thus perfected, was intended by him for publication; but his death happening before this was executed, prevented the world from receiving those observations, upon this subject, which his knowledge of the History and Constitution of Parliaments, would have enabled him to have given.

The Manuscript is now in the possession of Richard Blyke, Esq;

The Motives for this publication were, That, in the Editor's judgement, these sheets contained much useful and general information, on the subject of Controverted Elections; and that there never was a time, in his opinion, when such kind of knowledge and information, was more likely to become of general utility to the public, than the present.

The

The following Lists, shewing the places that returned members to the House of Commons in the reign of King Edw. I. and the gradual encrease of that House, subsequent to the reign of King Henry VII, it is imagined, will not be thought improper to be hereto subjoined.

The NAMES of such Counties, Cities, and Boroughs, as sent Members to the Parliament of the 23d of King Edward I. From the bundle of Writs remaining in the office of the King's Remembrancer in the Exchequer.

N. B. The places marked in the following list thus *, have long discontinued to return members, and have not had that privilege restored.

NORTHAMPTON County.

Northampton Town.

2

CUM-

CUMBERLAND County.

Carlisle. * Egremond.
Cockermouth.

WESTMORELAND County.

Appleby.

Essex County.

Colchester.

HERTFORD County.

LANCASTER County.

Lancaster Town. Wigan.
Preston. Liverpool.

KENT County.

Canterbury. * Tunbridge.
Rocheſter.

RUTLAND County.

MIDDLESEX County.

SURREY

SURREY County.

Guildford.

Rigate.

Southwark.

Blechingley.

SUSSEX County.

Horsham.

Shoreham.

Chichester.

Bramber.

Arundell.

Lewes.

CAMBRIDGE County.

Cambridge Town.

HUNTINGDON County.

Huntingdon Town.

LINCOLN County.

Lincoln City.

Stamford.

Grimsby.

BEDFORD County.

Bedford Town.

BUCKS County.

SOUTH-

SOUTHAMPTON County.

Winchester City.	* Alton.
Portsmouth.	Andover.
Yarmouth	Southampton town.
Newport	* Alresford.
* Basingstoke.	* Overton.

CORNWALL County.

Donheved.	Tregony.
Liskarett.	Truro.
Bodmyn.	Helston.

WORCESTER County.

Worcester City.	* Duddelegb.
Evesham.	* Kidderminster.
Droitwich.	* Pershore.
* Brem.	

WARWICK County.

Warwick Town.	Coventry.
---------------	-----------

LEICESTER County.

Leicester Town.

YORK

[[xcm]]

YORK County.

York City.	Hedon.
Beverley.	Pontefract.
Ripon.	Thirsk.
Scarborough.	* Jarvall.
* Pickering.	* Tyckhull.
Malton.	

GLOUCESTER County.

Gloucester City.	Bristol City.
------------------	---------------

SOMERSET County.

Bath.	Bridgewater.
Wells.	Taunton.
* Axebrugg.	

DORSET County.

Lyme.	Dorchester.
Bridport.	Shaftesbury.

HEREFORD County.

Hereford City.	Weobly.
Leominster.	* Ledbury.

DEVON

DEVON County.

Exeter.	Tavistock.
Totness.	* Torriton.
Plympton.	Barnstaple.

OXON County.

Oxon City.

BERKS County.

Wallingford.	Reading.
--------------	----------

WILTS County.

New Sarum.	Cricklade.
Marlborough.	Bedwin.
Ludgershall.	Wilton.
Devizes.	* Bradford.
Calne.	Dunton.
Chippenham.	Old Sarum.

SALOP County.

Salop Town.	Bridgenorth.
-------------	--------------

STAFFORD County.

Stafford Town.

Not-

NOTTINGHAM County.
Nottingham Town.

DERBY County.
Derby Town.

NORTHUMBERLAND County.

Newcastle. * Bamburg.
* Canebrig.

The following Places sent Members in the
25th and 26th years of King Edw. I.

HERTFORDSHIRE.

St. Albans. Hertford.

LONDON.

SUSSEX.

Seaford. Lewes.
Shoreham. Chichester.
Steyning.

CAM-

CAMBRIDGESHIRE.

Ely City.

YORKSHIRE.

Alverton.

SOMERSETSHIRE.

Ivelchester.

Milborn Port.

DORSETSHIRE.

Wareham.

* Blandford.

DEVONSHIRE.

* Sutton.

* Ashperton.

Dartmouth.

NORFOLK.

Norfolk County.

Great Yarmouth.

Norwich City.

SUFFOLK.

Suffolk County.

Dunwich.

Ipswich.

Orford.

By

By the above List it appears, that in the 23d year of K. Edw. I. 145 places returned Members to Parliament; and that in the 25th and 26th years of that King, 24 other places likewise sent Members.

After that time, many of the mercantile Boroughs, being unwilling, or unable by the decay of trade, and other causes, to advance the wages and expences, allowed for the support of their Members, whilst they were attending their duty in Parliament, by the connivance of the Sheriffs, frequently omitted to make any Return to the Writs of Election. Other Boroughs were therefore summoned to send Members; so that, in general, the numbers returned were nearly the same.

* Sir John Fortescue, who was Chancellor to K. Henry VI, says, that in that reign, the House of Commons consisted of more than 300 chosen men. And Mr. Willis, in his Preface to his Not. Parl. Vol. I. p. ix.

* Selden's Fortescue, cap. 18. p. 40.

says, that from the reign of K. Edw. I, to K. Edw. VI, not thirty new Boroughs were created.

Of about the same number, the House of Commons was composed until the reign of K. Henry VIII, when an Act of Parliament passed in the 27th year of that King, enabling the County of Monmouth to send two, and the City of Monmouth to send one Member each; and also twelve Counties and twelve Towns in Wales, to send one Member each. And in the 34th year of the same King, an Act passed, enabling the County and City of Chester to send two Members each. Subsequent to that reign, the practice of encreasing the number of parliamentary Boroughs (probably to answer some political exigencies) became more frequent; either by reviving the right of some ancient Boroughs, which had formerly sent Members, but had long discontinued to do so; or by creating new Boroughs by Letters Patents from the Crown, granting the privilege of sending

4

Members

[xcix]

Members as a new right. By these means, from the reign of K. Henry VIII, to the reign of K. Charles II, there was an increase of more than 200 Members to that House; as will appear by the following Lists.



[c]

BOROUGHES, &c Restored.

By King Henry VIII.

N^o of Members.

Orford,

 2

Men.
H.c.26.

BOROUGHES, &c. Created.

By King Henry VIII.

N^o of Members.

Hen.
II. c. 26.

Anglesey County,	—	1
Beaumaris,	— —	1
Brecknock County,	—	1
Brecknock Town,	—	1
Cardigan County,	—	1
Cardigan Town,	— —	1
Carmarthen County,	—	1
Carmarthen Town,	—	1
Carnarvon County,	—	1
Carnarvon Town,	—	1
Denbigh County,	—	1
Denbigh Town,	— —	1
Flint County,	— —	1
Flint Town,	— —	1
Glamorgan County,	—	1
Caerdiff,	— —	1
Merioneth County,	—	1
Montgomery County,	—	1
Montgomery Town,	—	1

BOROUGHES, &c. Restored.
By King Henry VIII.

N^o of Members.

Year	County	Town	Value
1870	Angley County		
1871	Bearman		
1872	Brock County		
1873	Brock County		
1874	Brock County		
1875	Brock County		
1876	Brock County		
1877	Brock County		
1878	Brock County		
1879	Brock County		
1880	Brock County		
1881	Brock County		
1882	Brock County		
1883	Brock County		
1884	Brock County		
1885	Brock County		
1886	Brock County		
1887	Brock County		
1888	Brock County		
1889	Brock County		
1890	Brock County		
1891	Brock County		
1892	Brock County		
1893	Brock County		
1894	Brock County		
1895	Brock County		
1896	Brock County		
1897	Brock County		
1898	Brock County		
1899	Brock County		
1900	Brock County		

By King Edward VI.

7 Ed. VI.	Lancaster,	—	—	2
	Preston,	—	—	2
	Wigan,	—	—	2
	Liverpool,	—	—	2
6 Ed. VI.	St. Albans,	—	—	2
	Petersfield,	—	—	2

Hen.
L.C. 13.

Ed. VI.

Ed. VI.

BOROUGHES, &c. Created.

By King Henry VIII.

N^o of Members.

Pembroke County,	_____	1
Pembroke Town,	_____	1
Haverfordwest,	_____	1
Radnor County,	_____	1
New Radnor,	_____	1
Monmouth County,	_____	2
Monmouth Town,	_____	1
Chester County,	_____	2
Chester City,	_____	2
Berwick upon Tweed,	_____	2

33

By King Edward VI.

Ed. VI.	Thetford,	_____	2
	Peterborough,	_____	2
	Brackley,	_____	2
	Boston,	_____	2
Ed. VI.	Saltash,	_____	2

BOROUGH S, &c. Created.

By King Edward VI.

			N ^o of Members.
Camelford,	_____	_____	2
Westflow,	_____	_____	2
Grampound,	_____	_____	2
Boffiney,	_____	_____	2
Michell,	_____	_____	2
Newport,	_____	_____	2
Maidstone,	_____	_____	2
Westminster,	_____	_____	2
Penryn,	_____	_____	2
		_____	28

By Queen Mary.

Q. Mary.	Aylesbury,	_____	_____	2
	Morpeth,	_____	_____	2
	Banbury,	_____	_____	1
	Knaresborough,	_____	_____	2
	Boroughbridge,	_____	_____	2
& 3 Phil, Mary.	Higham Ferrers,	_____	_____	1
	Abingdon,	_____	_____	1

BOROUGHES, &c. Restored.

By Queen Mary.

	Nº of Members.
Camford,	2
Weymouth,	2
Grimsby,	2
Doncaster,	2
Sheffield,	2
Leeds,	2
Manchester,	2
London,	4

By Queen Elizabeth.

1 Eliz.	Tregoney,	2
5 Eliz.	Beverley,	2
13 Eliz.	East Retford,	2
27 Eliz.	Yarmouth,	2
	Newport,	2
	Andover,	2

in the Isle
of Wight,

BOROUGHES, &c. Created.

By Queen Mary.

	N ^o of Members.	
St. Ives,	—	2
Aldborough,	—	2
Castle-Rising,	—	2
	—	17

By Queen Elizabeth.

Eliz.	Newton,	—	2
	Clitheroe,	—	2
	Minehead,	—	2
	Sudbury,	—	2
Eliz.	St. Germans,	—	2
	St. Maws,	—	2
	Stockbridge,	—	2
	Tamworth,	—	2
Eliz.	Eastloe,	—	2
	Fowey,	—	2
	Cirencester,	—	2
	Queenborough,	—	2
	Christ-Church,	—	2

BOROUGHES, &c. Restored.
By Queen Elizabeth.

N^o of Members.

1	_____	_____	_____
2	_____	_____	_____
3	_____	_____	_____
4	_____	_____	_____
5	_____	_____	_____
6	_____	_____	_____
7	_____	_____	_____
8	_____	_____	_____
9	_____	_____	_____
10	_____	_____	_____
11	_____	_____	_____
12	_____	_____	_____

By King James I.

2 Jam. I.	Harwich,	_____	_____	2
3 Jam. I.	Evesham,	_____	_____	2
18 Jam. I.	Ilchester,	_____	_____	2
19 Jam. I.	Pontefract,	_____	_____	2
21 Jam. I.	Agmondesham,	_____	_____	2

Eliz.
Eliz.
A
E
C
K
B
B
N
L
W
H
R

am. I.
am. I.
am. I.
C
O
B
T

**BOROUGHES, &c. Created
By Queen Elizabeth.**

		N ^o of Members.
	Aldborough, Suffolk, ———	2
	Eye, ———	2
Eliz.	Corffe Castle, ———	2
Eliz.	Kellington, ———	2
	Bereafston, ———	2
	Bifhops Castle, ———	2
	Newton, Ifle of Wight, ———	2
	Lymington, ———	2
	Whitchurch, ———	2
	Hailemere, ———	2
	Richmond, ———	2
		48

By King James I.

am. I.	Cambridge University, ———	2
	Oxford University, ———	2
am. I.	Bewdley, ———	1
am. I.	Tewkesbury, ———	2

BOROUGHES, &c. Restored.

By King James I.

		N ^o of Members.
Wendover,	—	2
Great Marlow,	—	2
Hertford,	—	2
		16

By King Charles I.

3&4 Ch. I.	Weobley,	—	2
	Milborn Port,	—	2
15 Ch. I.	Seaford,	—	2
16 Ch. I.	Cockermouth,	—	2
	Okehampton,	—	2
	Honiton,	—	2
	Ashburton,	—	2
	Northallerton,	—	2
	Malton,	—	2
			18

Jam. I.

Jam. I.

Ch. II.

Ch. II.

BOROUGHES, &c. Created.

By King James I.

N^o of Members.

Jam. I.	Tiverton,	—	—	2
Jam. I.	St. Edmond's Bury,	—	—	2
				—
				11

By King Charles I.

None.

By King Charles II.

Ch. II.	Durham County,	—	—	2
	Durham City,	—	—	2
Ch. II.	Newark upon Trent,	—	—	2
				—
				6

SUM.

SUMMARY.

Restored.		Created.	
	Members.		Members.
By K. Henry VIII.	2	By K. Hen. VIII.	33
Edw. VI.	20	Edw. VI.	28
Q. Mary	4	Q. Mary	17
Elizabeth	12	Elizabeth	48
K. James I.	16	K. James I.	11
Charles I.	18	Charles II.	6
	72		143
			72
Total Restored and Created in those Reigns,			215

TABLE

T A B L E

O F

The following C A S E S.

1.	NORFOLK, County,	—	Page 3
2.	SOUTHWARK, Borough,		7
3.	WINCHELSEY, Port,	— —	12
4.	STAFFORD, Borough,	—	25
5.	BLECHINGLEY, Borough,	—	29
6.	CHIPPENHAM, Borough,	—	47
7.	DOVER, Port,	— —	63
8.	ARUNDEL, Borough,	—	71
9.	NEWCASTLE-UNDER-LINE, Bo- rough,	— —	76
10.	CAMBRIDGE, County,	—	80
11.	AGMONDESHAM, MARLOW, WEN- DOVER, and HERTFORD Boroughs.	} 87	
12.	STOCKBRIDGE, Borough,		
13.	GLOUCESTER, County,	—	99
	i		14. CIREN-

14. CIRENCESTER, Borough,	Page 104
15. HAVERFORDWEST, Borough,	112
16. MALMESBURY, Borough,	— 115
17. MIDDLESEX, County,	— 117
18. MONMOUTH, Borough,	— 120
19. CUMBERLAND, County,	— 124
20. EAST-RETTFORD, Borough,	— 128
21. PONTEFRAC, Borough,	— 133

22. WINCHESTER, Borough,	— 135
23. STAFFORD, Borough,	— 138
24. BLACKBURN, Borough,	— 140
25. CHESTER, Borough,	— 142
26. DOVER, Borough,	— 144
27. ARUNDEL, Borough,	— 146
28. NEWCASTLE, Borough,	— 148
29. CAMBRIDGE, County,	— 150
30. HENDON, Borough,	— 152
31. HENDON, Borough,	— 154
32. HENDON, Borough,	— 156
33. HENDON, Borough,	— 158
34. HENDON, Borough,	— 160
35. HENDON, Borough,	— 162
36. HENDON, Borough,	— 164
37. HENDON, Borough,	— 166
38. HENDON, Borough,	— 168
39. HENDON, Borough,	— 170
40. HENDON, Borough,	— 172
41. HENDON, Borough,	— 174
42. HENDON, Borough,	— 176
43. HENDON, Borough,	— 178
44. HENDON, Borough,	— 180
45. HENDON, Borough,	— 182
46. HENDON, Borough,	— 184
47. HENDON, Borough,	— 186
48. HENDON, Borough,	— 188
49. HENDON, Borough,	— 190
50. HENDON, Borough,	— 192
51. HENDON, Borough,	— 194
52. HENDON, Borough,	— 196
53. HENDON, Borough,	— 198
54. HENDON, Borough,	— 200
55. HENDON, Borough,	— 202
56. HENDON, Borough,	— 204
57. HENDON, Borough,	— 206
58. HENDON, Borough,	— 208
59. HENDON, Borough,	— 210
60. HENDON, Borough,	— 212
61. HENDON, Borough,	— 214
62. HENDON, Borough,	— 216
63. HENDON, Borough,	— 218
64. HENDON, Borough,	— 220
65. HENDON, Borough,	— 222
66. HENDON, Borough,	— 224
67. HENDON, Borough,	— 226
68. HENDON, Borough,	— 228
69. HENDON, Borough,	— 230
70. HENDON, Borough,	— 232
71. HENDON, Borough,	— 234
72. HENDON, Borough,	— 236
73. HENDON, Borough,	— 238
74. HENDON, Borough,	— 240
75. HENDON, Borough,	— 242
76. HENDON, Borough,	— 244
77. HENDON, Borough,	— 246
78. HENDON, Borough,	— 248
79. HENDON, Borough,	— 250
80. HENDON, Borough,	— 252
81. HENDON, Borough,	— 254
82. HENDON, Borough,	— 256
83. HENDON, Borough,	— 258
84. HENDON, Borough,	— 260
85. HENDON, Borough,	— 262
86. HENDON, Borough,	— 264
87. HENDON, Borough,	— 266
88. HENDON, Borough,	— 268
89. HENDON, Borough,	— 270
90. HENDON, Borough,	— 272
91. HENDON, Borough,	— 274
92. HENDON, Borough,	— 276
93. HENDON, Borough,	— 278
94. HENDON, Borough,	— 280
95. HENDON, Borough,	— 282
96. HENDON, Borough,	— 284
97. HENDON, Borough,	— 286
98. HENDON, Borough,	— 288
99. HENDON, Borough,	— 290
100. HENDON, Borough,	— 292

Mr.

[1]

MR. GLANVILLE'S REPORTS,
who sat in the Chair.

A BRIEF and faithful relation touching matters of privilege, ordered and adjudged by the commons in parliament assembled, at the parliament begun and holden at Westminster the 19th day of February [1623], in the one and twentieth year of the reign of our sovereign Lord King James; and there continued until the 29th day of May following, and then prorogued until the 2d day of November, 1624. Upon Monday the 23d day of the same month [of February], the said commons, according to their *ancient usage in that behalf*, appointed certain select Committees to examine and consider of all matters and questions which were or should happen during that session of parliament concerning elections, returns, or any other the privileges of the house, and the same

to report unto the said house; ordering withal that the said Committees for that purpose should meet in the Exchequer Chamber, upon Thursday next following, at two of the clock in the afternoon, and so upon every Tuesday and Thursday, at the same time and place, during all that sessions of parliament.

These Committees attended the service accordingly; and upon several reports from them made to the said house of commons, and upon other motions and debates concerning such matters as were referred to the consideration of those Committees, these proceedings, orders, and resolutions ensuing, were had and passed, as followeth:

I. The

I.

The Case concerning the Election and Return of Knights for the Shire in the County of Norfolk.

APETITION was exhibited to the said committees by diverse freeholders of the said county, complaining, that Sir Thomas Holland, knt. and Sir John Corbett, bart. were returned of record to be knights for the said county at this parliament. Whereas Sir Roger Townshend, knt. and bart. and Sir Robert Gawdy, knt. as by the said petition was furnished, were duly elected, and ought to have been returned, or at leastwise, that no election at all was duly made.—Which case resting wholly upon matter of fact, the committee, after several days spent in hearing the council, witnesses, and proofs on both sides, was of opi-

nion, upon a plurality of voices, that both the said knights so returned were duly elected; and gave order for their opinion to be so reported to the house, without declaring the state or particulars of the proof: which being done, it was nevertheless, in the first place, resolved and ordered by the house, that the state and particulars of the said proof ought to be, and should be, reported to the house; for that the house is not to be concluded by the opinion of any committee in matter of fact, no more than in matter of law. And if report should not be made to them of the proof, they cannot judge upon the same what the true case is; wherein the different proceedings of this court and counsel of discretion and state, from the course of ordinary courts of justice at the common-law, between party and party, are very remarkable; for there the verdict of the jury concludeth the court for matter of fact, but so doth not the opinion of Committees in this case, albeit it be somewhat in the nature of a verdict. Whereupon the proofs on both sides being reported in the house, and the question thereupon conceived to this effect, that as many as were of opinion that the said knights so returned were duly elected should say, Aye.—And again, that as many as were of another mind should say, No. It could not be

be discerned by the sound, which side had the more voices ; so the house was to be divided, and the polls on both sides numbered, as the manner is in the like cases : and then a new question arose, whether the affirmative or negative voices ought to go forth ; for that it was insisted upon by some, that, by the orders of the house, the affirmative voices ought always to go forth upon every division of the house. But, upon debate, it was resolved and ordered, that the negative voices ought to go forth in this case, for that the said Sir Thomas Holland and Sir John Corbett being returned of record, the house is possessed of them as lawful members, until by judgement they might be removed, if there be cause ; and the voices of such as would have them removed, and others returned in their places, or a writ awarded for a new election, do tend to an innovation, although their voices and opinions be pronounced by the negative word.

But when the question is upon the passage of a bill, there it is true that the affirmative voices must go out, for that they are for an innovation and to bring in a new law ; so as the rule is not constant, that the affirmative voices must go forth when the house is divided. But thus, that those that are for innovation or alteration of that which

by presumption is well enough, until it be actually resolved to the contrary, ought to undergo the trouble and disadvantage, if it be any, of going forth when the house is divided upon such a question. According to this resolution of the house, grounded upon these reasons, the negative voices went forth, and tellers were appointed by Mr. Speaker, as is used in such cases; who, having taken the numbers on both sides, made their report thereof in the house, whereby the return and election of the said Sir Thomas Holland and Sir John Corbett was found and adjudged good by plurality of voices.

II.

The Case concerning the Election and Return of Burgeffes for the Borough of Southwark in the County of Surrey.

UPON a motion made to the Committee touching the election and return of the burgeffes for the said Borough, the matter concerning the same was examined by the said Committee, in presence of the parties; and thereupon the case appeared to be thus in effect:

At the day appointed for the election, such as had voice in the election met in their usual place for such purposes, where Mr. Richard Yarwood was clearly chosen, in the first place, to be one of the burgeffes for the said borough, and so then and there pronounced and acknowledged without contradiction. And touching the election of the other burgeffs, for the second place, it appeared, that Francis Mingaie, esq; and Robert Bromfield were propounded and put in election.

And the electors, according to their ancient usage, declaring for whom they were, by holding up of hands, at the first trial it seemed Mr. Mingaie had the more hands with him; but upon a second and further trial, it seemed very clear that Mr. Bromfield had the more hands for him. But there were divers watermen and others present who ought to have no voice in the election; and albeit a motion was made in due time, to try, by numbering the polls of the electors, who had the more voices, yet that course was not taken, but the assembly of the electors dissolved without numbering the polls. And afterwards two several indentures were made and sealed; the one between some of the burgessees, electors of the said borough, of the one part, and the sheriff of the county of the other part, whereby the said Mr. Yarwood and Mr. Mingaie were nominated to be elected; and the other between others of the said burgessees, electors of the one part, and the said sheriff of the other part, wherein Mr. Bromfield and Mr. Yarwood were nominated to be elected; and both the said indentures were returned by the said sheriff into the Chancery, annexed to the writ of summons to the parliament for that county. Upon all which matters and case two principal questions were moved and discussed.

First,

First, Whether the return of Mr. Yarwood was sufficient to enable him to sit in the house without any amendment of the said return.

Secondly, Whether Mr. Mingaie or Mr. Bromfield were either of them duly elected.

Touching the *first*, it was conceived by the Committee, and so reported to the house, and there accordingly resolved, that the said return was sufficient. For a return of this kind, if it have substance, shall not be void for want of form. And, in both indentures, Mr. Yarwood is one party returned; and the difference between Mingaie and Bromfield ought not to turn Yarwood nor the commonwealth to prejudice, in making him to lose his employment, or the house to want his service and assistance in the mean time, until an amendment of the return might be had, which peradventure may be a long time, especially if the case should happen touching a remoter borough: but if all the three names had been returned in one only indenture, or in three several indentures, or Yarwood in one indenture alone, and Mingaie and Bromfield in another; then albeit Yarwood's election had been good, yet for want of a certain

and sufficient return, the house could take no notice thereof; neither could he sit in the house as a lawful member thereof, until, by order, the house had adjudged or declared his election good, and caused the return to be amended and reduced to a sufficient certainty. For, in those cases, there had been irreconcilable contrariety betwixt the indentures touching all their names. But, in the case in question, though the indentures be contrary touching Mingaie and Bromfield, yet they agree concerning Yarwood.

Touching the *second* question, it was conceived by the committee, and so reported to the house, and there accordingly resolved and ordered, that neither the said Mingaie nor Bromfield were duly chosen; for that there being a contrariety of opinions amongst the electors, and the poll duly demanded for clearing of the doubt, the truth was not tried out by the poll, which is the only certain means rightly to decide the difference in case of opposition, especially where others are present besides the electors, who, in holding up their hands, or founding of voices, or separation of companies, or the like, amongst a multitude, cannot be distinguished from the electors; and so the proceedings of the electors, in this case, concern-
ing

ing the second burges's place, being very imperfect, and void in law, a warrant ought to made; which was made accordingly by Mr. Speaker, for a new writ to go forth for the choice of another burges for the said borough; upon which new writ the said Bromfield was duly elected and returned, and did thereupon serve in the house as a lawful member thereof.

III.

The Case concerning the Election and Return of one of the Barons, or Burgeffes, for the Port, or Borough, of Winchelfey, in the County of Suffex, being one of the Cinque Ports.

A PETITION was exhibited to the said Committee by Sir Alexander Temple, knt. thereby suggesting, that whereas the said Sir Alexander was lawfully elected to be one of the barons, or burgeffes, for the said port, or borough; yet nevertheless John Finch, esq; by the undue practice and misdemeanor of Paul Wymond, mayor of Winchelfey aforesaid, was unlawfully returned instead of the said Sir Alexander; and humbly prayed, that the said unlawful return might be amended, and the said misdemeanor punished according to justice, and the rights and privileges of the commons in parliament. Whereupon the matter touching the misdemeanor of the said Paul Wymond being opened to the
com-

committee, and some proof thereof made, there appeared so just cause of suspicion against him, that they reported to the house, that, in their opinion, he was fit to be sent for to appear, and make answer in person to the accusation laid against him. Hereupon, by order of the house, he was sent for to appear accordingly; yet not as a delinquent condemned, but only as a person accused. It being the justice of the house to condemn no man unheard, unless it be in case of willful contempt by refusal to appear; nor so much as to send for any out of the country, to make answer to supposed misdemeanors, before some ground and good probability that they are guilty.

Upon the personal appearance of Paul Wymond, the whole matter of the said petition was fully heard and examined before the committee, in the presence of the parties council, and witnesses on all sides, when the case was found to be thus :

The said port, or borough, being to have barons, or burgessees, to the parliament by prescription, and standing incorporated by the name of mayor, jurates, and freemen, it was admitted by all the parties, that only the mayor, jurates, and
freemen,

freemen, inhabitants, ought to have voices in the election of such barons, or burgesſes; but that at a hundred-court holden at Wincheſſey, the firſt of November, 7^o Jacobi, before the deputy-mayor there, and the jurates with him affociate, it was then ordered and decreed, amongſt other things, that from thenceforth there ſhould not any free-man, or jurate, of the town have his voice in any election, or in the paſſing of any act, but ſuch freemen and jurates as ſhould be inhabitants in the town, by the ſpace of three months together next before the time of ſuch election to be made, or ſuch act to be paſſed, except the mayor for his voice.

At the time of meeting, for the election in queſtion, there were in this town only fix jurates, namely, the ſaid Paul Wymond, then mayor, and five others; and eleven freemen, who were clearly acknowledged to have voice in the election; and Jonathan Tilden and Daniel Tilden, two other jurates, who ought alſo to have voice in the election, if the common-law, or the ſaid decree or conſtitution, did not exclude them by reaſon of non-reſidence, they having empty houſes in the town, wherein they had not dwelt by the ſpace of three months or more next before the election,
but

but had dwelled in the same within a year and a day next before the election, and yet were rated to scot and lot, as inhabitants of Winchelsey, and generally reputed to continue still freemen there, and had still their voices allowed as freemen in other assemblies there for other matters, within three months next before the election, and shared in profits of the town tenements as freemen; and had the benefit of certain grafs, called Withermans, being a customary privilege allowed only to freemen there.

The mayor, having received a precept to proceed to the election, caused notice, or warning, to be given to the jurates and freemen the two and twentieth of January, 1623, at night, omitting the Tildens, to meet the next morning, at the court-hall, as about the business of the town generally: at which time there met the mayor and six jurates, as also both the Tildens, and ten of the eleven freemen; in all eighteen with the Tildens, and sixteen besides them. Being so assembled, the mayor demanded of the Tildens, how, and why they came there? Who declared, that they thought the meeting was to elect barons, or burgeses, to the parliament; and, that if it were so, they came to give, and did give, their
voices

voices to Sir Alexander Temple; and so did Richard Martin, another of the said jurates. Whereupon the mayor told them, that the said Tildens were no freemen to give voice, by reason of the said constitution, or decree; and that they came to raise a tumult, and that they would be punished for the same. And that peradventure their meeting was but to disfranchise some jurates, or freemen. And that Sir Alexander Temple was no fit man to be a baron, or burges, to serve in parliament, being of suspected religion, and allied to an arch-papist, the Earl of Clanricard, who had in his house armour enough for a whole army of men; whereas the said Sir Alexander was not allied to the said Earl. And threatened the said Martin, who was an inn-keeper; and that he should look better to his small pots, which had loose bottoms. After controverting thus the matter an hour or more, the said Tildens, by the indirect means of the mayor, departed; leaving behind them, in the court-hall, only the other sixteen electors. When presently the precept for election was read, and Mr. Finch and Sir Alexander Temple proposed to be in election for one of the barons, or burges, of the said town. Whereupon the said mayor, and seven others, in all eight of the sixteen then present, gave voices for Mr. Finch,

Finch, and the other eight of them for Sir Alexander Temple. Yet, upon a conceit amongst them, that the mayor's voice was, in law, a voice of privilege, and a casting voice to carry the election on his side, and not in any other sort, the said Mr. Finch, after the assembly dissolved, was certified over to the right honourable the Lord Zouche, Lord Warden of the Cinque Ports, as duly elected, and by his Lordship was accordingly returned into the chancery; some of those eight, who gave voices for Sir Alexander Temple, joining with the other eight in the same certificate, or return, to the said Lord Warden. And in this case divers points were moved and debated in the committee, and reported to the house with their opinion and reasons; all which, under the general order and judgement of the house thereupon, were resolved and adjudged accordingly.

First, That the said decree, constitution, or by-law, albeit it were granted, that by charter, or prescription, the said town might make divers constitutions and bye-laws concerning their other affairs or government, cannot alter the manner, or right, of election of barons, or burgessees, to the parliament, but is to that purpose utterly void; because, the commonwealth being interested in the

C

freedom

freedom and consequence of such elections, the same cannot be restrained in any sort by any private ordinance whatsoever.

Secondly, That the said Tildens, by the common-law of England, are such inhabitants of Winchelsey as ought to have voice in the said election, their said non-residence notwithstanding; because it appeareth not that they removed to dwell elsewhere with a purpose there to settle, and never to return to Winchelsey again. And though they had no servants, or family, at Winchelsey, yet they kept their houses in their own hands, and might return at their pleasure. And if the absence of three months, or more, under a year and a day, should be such a non-residence as to make a man no inhabitant in such a case as this, then one month's absence, or less, by the same reason, might work the like effect, and so great uncertainty introduced, which would be very inconvenient.

Besides, the said Tildens, having been always allowed and reputed as freemen and inhabitants in so many particulars as are expressed here before in the rehearsal of the case, ought not now, on the sudden, to be put out, but must, at the time of this election, be allowed; especially after their
 opinions,

opinions, or voices, by them intimated, or by others guessed at, which argueth apparent fraud, or practice, in the opposite party.

Thirdly, That an election of a burghs to the parliament, without due warning aforegoing, if any of the electors be absent at the time of such election, is void; for without such warning, the electors know not where nor when to meet, and they are not bound to attend continually in expectation, when or where it should be.

Fourthly, That the said warning, given for a meeting *generally*, without expressing the cause why, was an insufficient warning; and, consequently, the election thereupon void. For, unless the electors know beforehand what the cause of meeting is, they cannot advise or consider sufficiently with themselves what to do; nor who, in their judgements, should be the fittest persons to be chosen, but should go to a precipitate election, upon a sudden proposition, which may turn the commonwealth to prejudice.

And whereas, by law, he that, being duly warned, doth yet absent himself, loseth his voice for that time; divers who, upon a general warn-

ing, supposing the matter to be but slight and ordinary, will peradventure make default, would not so do, nor lose their voice, if they were formally informed, as they ought to be, of the weight and consequence of such business as should be handled, whereof none can be greater than for elections to the parliament.

Fifthly, Albeit the said Tildens ought to have voices in the election, and did give their voices for Sir Alexander Temple as aforesaid, whereby there were ten of the electors present for him, against eight that were against him, yet there was no good election of him; for that they gave their voices too soon, before the precept read, and before the election was begun. For without a lawful precept they cannot proceed to an election; and whatsoever any elector speak or say touching the giving of his voice, it is not of force, unless it be expressed judicially in a lawful assembly for that purpose.

And howsoever the Tildens were at first minded to be for Sir Alexander Temple, yet, afterwards, upon reading of the precept, and debate with their companions, or upon better consideration had with themselves, they might have given their voices
against

against him, and for some other. And if they had been duly warned, and then departed as aforesaid, without the practice, or indirect procurement, of the mayor, they had utterly lost their voices for this time.

Sixthly, That there was no good election of Mr. Finch, for that the warning was undue as aforesaid; and, for that the said Tildens were unjustly excluded. And in case the warning had been good, and the Tildens justly excluded, yet he was not well elected; for that of common right, in case of equality of voices, the mayor of a town hath no casting, or over-ruling, voice in the affirmative to carry an election, without the help of a custom, or some other special matter, to enable him in that behalf, whereof nothing appeared in this case. But the electors ought to continue together, or meet again, by adjournment, till they can agree to an election by plurality of voices.

Seventhly, That such of the electors, who stood for Sir Alexander Temple, had not made due election of Mr. Finch, by their joining to return or make certificate of him to the Lord Warden in manner and form only as is aforesaid. For that a return, without a due election, when once the

same is made appear to the house, is to be adjudged void, as wanting a good foundation. And albeit it be true, that in an assembly for an election, he which, at the beginning of the election, pronounceth his voice one way, *finding the voices equally divided*, may, before the assembly dissolved, change his mind, and give his voice another way, and so make a good election that way, by plurality of voices : yet, in the case in question, those who chose Sir Alexander Temple, and yet joined to return, or certify, Mr. Finch, did it not by changing, or new-giving, their voices for him, but only as conceiving, erroneously, that the mayor had a casting voice ; and that so the election was thereby past and accomplished, and consequently their voices involved in the same ; which, in truth, was not so ; neither did they, during the assembly, do any thing touching the alteration of their voices ; and, if they did, after the assembly dissolved, it was extrajudicial and void ; the rather for that if an elector, when he hath given his voice one way, in a public assembly, assisted and supported by his fellows, may afterwards controul it, by his voice, or hand, or otherwise, in private, no man shall know when an election is finished, and single men may be easily corrupted, or misled, for particular respects, to give their voices
amiss ;

amiss; which, by consequence, might turn the public to much prejudice.

Eighthly, That, upon the whole matter, there being no election at all in this case, Mr. Finch should stand excluded and discharged from being any longer in the house; and that a warrant ought to be made, which accordingly was made by Mr. Speaker, for a new baron, or burges, to be chosen instead of the said Mr. Finch.

Ninthly, That the said Paul Wymond, mayor of Winchelsey, for giving order for such a cautelous warning to be made about the election, threatening and terrifying of the Tildens and Martin, three of the electors; unlawfully excluding the Tildens from their voices; seeking to draw the said Sir Alexander into scandal, touching his religion, without cause; had committed an offence against the liberties and privileges of the commons in parliament, and to the preventing and hindering a due election. For which, after report thereof made from the committee, he was brought to the bar of the house, kneeling as a delinquent at his first entrance; but then directed by Mr. Speaker to stand up, which he did. Whereupon Mr. Speaker, as the manner is, rehearsed to him the particulars of the offence

wherewith he was charged, hearing his defence thereunto, what he could say for himself, and debating it with him as much as was convenient. Which being done, he was again withdrawn, while the house advised and resolved what to do with him. And conceiving no satisfaction by his defence, they did order and adjudge, that for such his misdemeanor, he should be committed to prison, under the custody of the serjeant at arms attending upon Mr. Speaker, for certain days; and then, upon his humble submission and acknowledgement of his fault, at the bar of the house, upon his knees, to be enlarged from hence; and to make acknowledgement of his fault at Winchelsea, in the presence of the jurates and the freemen there, before the writ for a new election should be executed. Which judgement being agreed upon in the house, the delinquent was again brought in, and set at the bar on his knees; and Mr. Speaker, in the name of the house, pronounced judgement upon him for, and in the name of, the whole house. Which judgement was executed upon him accordingly..

IV.

The Case concerning the Election and Return of Burgeſſes for the Borough of Stafford, in the County of Stafford.

UPON a petition, exhibited by Sir William Walter, knt. ſuppoſing that Matthew Cradock, eſquire, in the firſt place, and the ſaid Sir William Walter, in the ſecond place, were duly elected burgeſſes for the ſaid borough, to ſerve in this parliament; and, that yet, nevertheleſs, Richard Dyott, eſquire, was unduly returned in the place of the ſaid Sir William Walter; it was deſired, by the ſaid Sir William Walter, that the ſaid Mr. Dyott might be diſcharged, and the ſaid Sir William Walter returned, according to the original and true election. Upon hearing of which cauſe, in preſence of the ſaid Sir William Walter, Mr. Cradock, and of the ſaid Mr. Dyott, and their counſel; it appeared, that upon the twenty-ſirſt of January, the mayor and ſome of the inhabitants of the ſaid borough being aſſembled

sembled to consult of a business touching their town-mills, one Mr. Dorrington unexpectedly produced a warrant, or precept, from the sheriff of the said county, for an election of burgeses for the parliament; whereupon divers of the electors, being formerly present, some others called by their friends, some of their own accord came also to the place, and moved to go to a present election, which was yielded unto. And the said precept, or warrant, being read, Mr. Cradock was propounded, and elected in the first place by a plurality of the voices of such as were there present, without any contradiction; but touching Sir William Walter and Mr. Dyott, for the second place, there was some difference, and divers of the electors were absent. This being the case, it was clearly conceived by the Committee, and so reported to the house, and there resolved, that the election was void for both burgeses for want of due warning, for the reasons formerly delivered in the case concerning Winchelsey. But another point was moved, whereof some little doubt was conceived by the Committee; namely, whether Mr. Cradock, against whose election and return no complaint, or motion, was made, nor petition exhibited, ought to be discharged out of the house, for the insufficiency of this election. And it was finally conceived

ceived by the Committee, and so reported to the house, and there resolved, that he might, and ought to be discharged from serving any longer upon this return; for that the pretended election of both burgessees, being accomplished at, and in, one and the same assembly, or meeting, and the election of one of them void for such a cause as runneth and extendeth equally to both burgessees, namely, want of warning, their cases cannot be severed; and, consequently, the house, *ex officio*, and of necessity, must take notice, that they are both in like case, and in right of the commonwealth, must give judgement accordingly. But if the election to both places were void for several causes, which might be made to appear for the one, without making it to appear also for the other; as if the one were void for lack of sufficient number of voices, and the other by reason of some undue preparation of voices, or the like; there, though the election of both places were void, and the returns thereupon voidable, yet the election, and the return for the one place, being only complained of, the house, who are as well a council of state and court of equity and discretion, as a court of law and justice, might take order to discharge the one, and yet forbear to examine the case of the other, and so retain him still in the house.

house. Wherefore, by order of the house, a warrant was directed to be made, and accordingly was made, by Mr. Speaker, for a new writ to go forth, for a new choice of two burgeses for the said borough; upon which new writ the said Mr. Cradock and Mr. Dyott were both duly chosen, and again returned; and did thereupon serve in the house, as lawful members thereof.

V.

The Case concerning the Election and Return of one of the Burgeſſes for the Borough of Blechingley, in the County of Surrey.

A PETITION was exhibited by Mr. Henry Lovell, gent. ſuppoſing, that whereas Sir Myles Fleetwood, knt. and the ſaid Mr. Lovell were duly choſen burgeſſes for the ſaid borough, yet John Hayward, eſq; was unjuſtly returned inſtead of the ſaid Mr. Lovell, and prayed relief and reformation in the premiſſes according to juſtice. Within a few days after, another petition was exhibited by the borough-holders of the ſaid borough, juſtifying the election and return of Mr. Hayward, and charging the ſaid Mr. Lovell, and one Dr. Harris, parſon of Blechingley aforeſaid, with ſeveral miſdemeanors, in attempting to prevent and diſturb the due election, and return, of Mr. Hayward; and procuring a colour of election for the ſaid Mr. Lovell, and a return of him thereupon; and for a
practice

a practice and endeavour from thenceforth, to innovate and alter the ancient and settled custom of election time out of mind used within the said borough: praying, that some punishment might be inflicted on the said Mr. Lovell and Dr. Harris, and an order of direction to them, touching the election of burgesses at Blechingley for the future; the rather for that the said Sir Myles Fleetwood being returned a burgess for two places, namely, for Blechingley aforesaid, and the borough of Launceston in the county of Cornwall, the said Sir Myles, in the open house, according to the law, and ancient usage in such cases, made his election to serve for the said borough of Launceston; which election being accordingly recorded, the said borough of Blechingley became thereby void, for one other new burgess to be chosen thereunto, instead of the said Sir Myles Fleetwood. Upon this latter petition the house was moved, and upon some good probabilities shewed, that the practice and endeavour of innovation complained of was true, and no fair nor free election like to be had, until some order of direction was therein given. It was ordered, out of the care and discretion of the house, and to prevent further trouble or question, that no warrant should be made for a new writ to go forth to choose a new burgess,

burgesses, in place of the said Sir Myles Fleetwood, until the matter upon the said several petitions were heard and determined, and a certain course of election for the said borough directed by the order of the house. Shortly after, upon hearing and examining the matters of the said several petitions, in the presence of the said Mr. Lovell, and his counsel, and in the presence of the said Mr. Hayward and Dr. Harris, the case appeared to be thus :

The town of Blechingley is not incorporated, but it is, and hath been, an ancient borough by prescription, or custom, time out of mind : and wherein there are, and by all the time aforesaid there have been, divers burgages, or borough-tenements ; the freeholders, or tenants, whereof are called Burge-holders, and the lord of the said borough for the time being, hath also used to have a bailiff of or for the said borough, to perform such duties there, like the reeve, or bailiff, of an ordinary manor : and the said borough hath used, and accustomed, time out of mind, to send two burgeses to every parliament, who have been received, and served in parliament accordingly : and they have always, by all the time aforesaid, been chosen by the said burge-holders, resident within
the

the said borough for the time being, or by the greater number of them, for that purpose, upon lawful warning, duly assembled, within the said borough; which being so, the sheriff for the said county of Surrey, having received his Majesty's writ of summons for the parliament, dated the 30th of December, 21 Jac. returnable the 12 Feb. following, did thereupon, 16 Jan. direct his precept, or warrant, to the said bailiff and burgeses of the said borough, thereby requiring them to execute the tenor of the said writ of summons, in all things to them belonging; which said precept, or warrant, 17 January, 21 Jac. was delivered to one Mr. Wright, one of the said burge-holders, and he acquainting some others of the said burge-holders therewith, they told the rest thereof, insomuch as by this means, all of them had notice of it; and that the meeting for the election should be at a certain and fit place within the borough, upon the two and twentieth of the same month; at which time and place, seventeen of the said burge-holders met, but the rest absented themselves, albeit they had notice of the warning as aforesaid, neither was the said bailiff then and there present. At and in this meeting, the said Sir Myles Fleetwood and Mr. Hayward were propounded, and chosen, to be the two burgeses for this borough

at

at this parliament by the greater number of voices of the said burge-holders so assembled, and by them returned over to the sberiff by indenture accordingly; but the rest of the inhabitants of the said borough, not being burge-holders, did not attend at the said meeting, nor had any warning thereof. — 8 Feb. being Sunday, the bailiff of the borough proclaimed, or declared, openly in the church, that the next day, the burge-holders, and all the rest of the inhabitants, should meet to elect burgeses for the parliament. Whereupon, the next day, divers of the said inhabitants, to the number of thirty, met and chose the said Sir Myles Fleetwood and Lovell, and sealed an indenture thereof betwixt them and the sberiff; which indenture was also brought into the crown-office in the chancery, to be annexed to the writ of summons for the said county. And upon this case, divers matters in law being moved and debated; it was conceived by the Committee, and so reported to the house, and there resolved;

First, That howsoever of common-right, in a town which is a parliamentary borough by prescription, where no constant custom for election doth appear, more persons than in the case in question, ought to have voice in election of burgeses to the parlia-

D

ment;

ment; yet by prescription, or custom time out of mind used, the election may be restrained to a quantity and fewer number.

And albeit, as it was resolved in the case of Winchelsey, that no ordinance, or constitution, can restrain, or alter, the common right, or freedom, of such election; yet, by custom, the same may be limited, or abridged: and, as well as a borough by prescription, or custom, may gain a good right, and lawful title to send burgesses; so may the manner of the choice of them, be also guided and directed by the like custom, without any injury to the commonwealth, so as such custom be not unreasonable in itself, as this custom is not. And whereas, out of the form of certain indentures of certain returns for burgesses to the parliament for this borough, in 7 E. VI. & 2 & 3 P. & M. & 14 Eliz. now produced, witnessing, that such and such burgesses of the said borough, by special name, *et alii de communitate ejusdem burgi*, had theretofore returned the burgesses of the said borough for the parliament; it was objected by the council of the said Lovell, out of the said words, *et alii*, &c. that some others besides the burgesses, or burge-holders, there, ought to have voice in
such

such election; which others, they would infer, must needs be the residue of the inhabitants there.

It was answered, and resolved, that the form of the indentures, made in the country by ignorant persons, or transcribed, *per adventure*, by some borrowed precedent of another borough, where the election is different, are not conclusive to bind the parliament, by any inference to be made out of the same: *Et alii, &c.* may be well satisfied with this interpretation, that when the greater number of the burge-holders duly assembled, which to this purpose, and for this time, are representatively all the burge-holders, and the whole commonalty of the said borough, have chosen their burgessees for the parliament, and then some of them only by special name as for themselves, and the rest not named in the indenture of return, though joined in the election, do pass an indenture in form as aforesaid; these words, *et alii, &c.* may aptly be satisfied, by interpreting them to be meant, to be such others, not especially named in the indenture, as did either join in the election, or else were present, and had their voices over-ruled by plurality of voices against them, or else had their voices involved, and bound, by the election made by the rest in their absence: for those

electors that are present, and over-ruled by plurality, or that are absent at an election, if due warning be formerly given for their meeting, do so lose their particular voices, that, by implication and construction of law, the effect of such their voices, passeth into the plurality of such voices duly present at such meeting. And when such plurality of voices present, is once passed, the voices of all that were absent, and that were present, and over-ruled by plurality, are included and involved therein: and then the choice is, in law, the choice, not only of the electors present, or of the major part of them, but of all the burgessees and commonalty whatsoever of the whole borough, and may justly be returned, as the choice of them all. And it was further answered and resolved, that *Optimus verborum interpres est consuetudo*. And it did not appear, by any proof produced on the part of the said Lovell, that ever any of the inhabitants of the said borough, not being burge-holders, had voice in any such election, nor ever claimed so to have, until this very time.

Whereas, on the contrary party, it was plainly proved, by divers witnesses, that the said burge-holders only, made the elections for all the parliaments

ments holden within the memory of man now living.

Secondly, It was conceived by the Committee, and so reported to the house, and there resolved, that the lord's bailiff of the said borough, the same being no corporation, nor the said bailiff the head officer there, but only the lord's minister, is not such a person as ought to have receipt of the warrant, or precept, or the appointing of time and place, or giving of warning for this service, which is for the King and commonwealth, and not for the lord of the borough; who, by reason of his interest in the borough, hath nothing to do in the matter of such election: and that therefore the precept so delivered to the said Mr. Wright, being one of the electors, was well delivered; for it ought to be delivered to some of them, neither can one single warrant be well delivered to them all at once.

Thirdly, It was conceived by the Committee, and so reported to the house, and there resolved accordingly, that the said precept, or warrant, albeit it were directed to the bailiff and burgeses of Blechingley, was good enough; for if a warrant, precept, or return, for burgeses to the

parliament, have sufficient substance, it shall not be adjudged void for want of form, for the reasons expressed in the case of Southwark; and in this case, the direction of the precept being to the bailiff and burgeses, who are no corporation known by any such name, the word bailiff is surplusage, and the direction to the burgeses, who only have to do in the election, is sufficient in substance, and ought to be interpreted and applied, only to signify such kind of burgeses, namely, burge-holders, as have voice in the election.

Fourthly, It was conceived by the said Committee, and so reported to the house, and there resolved accordingly, that the warning given for the time and place of election, in manner and form only as aforesaid, was sufficient.

For where there is no known or special officer to this purpose within the borough, and the electors are many, and all in equal degree of right and interest, every one of them is a lawful officer to this purpose, to warn such of his fellows as he thinks good, to meet at such time and place as they appoint. Wherein, if all have convenient notice, by such means as aforesaid, and that the major part of them do meet accordingly, their
warning

warning is good, and their assembly and voice thereupon lawful, without any general notice: for that the law hath not assigned any certain form of general notice to be given; albeit by the particular custom, time out of mind used in some places, upon ringing of a bell, or blowing of a horn, or the like, with the general and public declaration of the cause thereof, all men, without expecting for any particular warning, are to attend at the time and place so generally notified, or are to lose their voices; but no such custom appeared in this case. So, upon the whole matter, the election of the said Mr. Hayward was adjudged good, and the return of him made to stand in force; and the said indenture concerning Mr. Lovell to be rejected.

Fifthly, Touching the said misdemeanors complained of against Mr. Lovell, and examined in his presence, besides the suspicions against him for his ill affection in religion, whereof no hold was taken in point of judgement, they appeared upon proof to be these:

First, That some money, though very little, had been given, on his behalf, to grant him voices,

Secondly, That he had threatened the town, to procure the lady of the borough to withdraw a benevolence of fourteen nobles *per annum* from the town, if they chose not him; and that such as opposed him, should be committed for the same.

Thirdly, That he laboured to get some of the electors to retract their election of Mr. Hayward.

Fourthly, That he procured the said latter undue meeting, and colourable election of himself, not only without any precept, but after denial by the sheriff to grant any new precept.

Fifthly, That he delivered the said latter indenture, of his own supposed election, into the crown-office in chancery, without the sheriff's consent, who never sealed counterpart thereof, nor ever accepted it.

Sixthly, That, to colour the matter, as if the sheriff had returned it, he drew the under sheriff, as about other business, to be present in the said crown-office, while the said Lovell, in his presence, but without his direction, delivered in the said indenture.

Upon

Upon which particulars, it was conceived by the Committee, and so reported to the house, that the said Mr. Lovell had committed an offence against the liberties and privileges of the commons in parliament, in attempting, by corruption and threatening, and other cunning and indirect proceedings, to hinder a due election, and to innovate a settled course of elections within the said borough.

To this opinion of the committee, the house also inclining, sent for the said Lovell; who, being heard, spoke for himself in such sort as Paul Wymond had done; and, giving no satisfaction, the house did afterwards order and adjudge, that he should, for such his offence, be committed prisoner to the Tower of London, during the pleasure of the house; and not to be enlarged till he made his submission, and acknowledged his fault upon his knees at the bar of the house; and that he should *not be elected for the said borough* (hac vice) *upon the new writ* which was to go forth to choose a new burgesses, in the place of the said Sir Myles Fleetwood: which judgement, after it had been solemnly pronounced against him, kneeling at the bar, after the form mentioned in the case of Winchelsey,

chelsey, touching Paul Wymond, was fully executed upon him in all points.

Sixthly, Touching the misdemeanors complained of against Dr. Harris; when the same came to be reported to the house, he was informed, that since the hearing thereof before the Committee, and their opinions delivered therein against him, he had, upon the next Sunday after, in his sermon, much misbehaved himself, in words tending to the dishonour and scandal of the justice and proceedings of the Committee.

Whereupon it was ordered, that he should attend the Committee, and they to review the proceedings; and also to examine this latter complaint touching Dr. Harris, and to report all things together concerning him. According to this order, Dr. Harris was heard before the Committee, and the witnesses produced; and, upon the whole matter, the case touching him was found, and reported to the house, to be thus in effect: namely,

That, in favour of the said Lovell, and to further his election, he had published in the church, a letter, written by the lady of the said borough, on the behalf of the said Lovell; That he had,
without

without warrant from the said lady, threatened the taking off the benevolence of fourteen nobles *per annum* from the town, if they chose not Mr. Lovell : That, being admonished for being too busy for a man of his profession, in the matter of the said election, he took occasion to say, that no honest man would be of the mind, that churchmen ought to have no voice in elections to the commons house of parliament; and that he would never come more into the pulpit, if they should be denied to intermeddle, and give voices in such business : That he gave out, he would be even with such as would not subscribe for Mr. Lovell : That he joined with Mr. Lovell, to procure the second pretended election, after a former election duly accomplished.

That, at a former examination of the matter before the Committee, the said Mr. Hayward, then and yet a member of the house, was required to testify his knowledge touching the matters then in question : which, he doing, and concurring therein with other witnesses, the said Dr. Harris, though not with a very loud voice, yet in the hearing of some other members of the house attending at the said Committee, said, That all which Mr. Hayward, in his testimony, had alleged, was nothing but lyes.

And,

And, lastly, when the said Committee had, in their opinions, condemned him for misdemeanors, then, in his sermon, the Sunday following, he took for his text, out of the Gospel for the day, the xxvith chapter of Matthew, and the 59th and 61st verses, in these words: "Now the chief
 "priests and elders sought false witnesses against
 "Jesus, to put him to death, but found none;
 "yea, though many false witnesses came, yet
 "found they none: at last came two false wit-
 "nesses, and said, This fellow said, "I am able
 "to destroy the temple of God, and to build it in
 "three days."—Upon which text, he said plainly, in the entrance to his sermon, that he had chosen this text concerning false witnesses and false judges, because himself had lately been sensible of the like wrong, and abused by false witnesses; and, intimating his case to be like Christ's, shewed how the whole bench, or court, sought to suborn false witnesses against him; and terming such witnesses by the name of lying knaves, and cunning knaves, with other like words; which were clearly conceived by the committee, to be by him spoken, and intended, with particular reference to them, as they had executed the office of judges; and to the said Mr. Hayward, Mr. Wright, and others,

others, as they had been witnesses in the said cause: the rather, for that the said Doctor himself, being strictly examined of his meaning therein, confessed ingenuously, that, in his introduction to his sermon, he spoke with relation to the said Mr. Wright, one of the said witnesses, as holding himself wronged by the testimony of the said Mr. Wright: And, in his sermon, comparing his own cause to Christ's cause; wherein the judges, as well as the witnesses, were false offenders; he made no difference between any part of Christ's case, and his own case. Whereby it is evident, that he meant scandalously, as well against the committee, as against the witnesses.

Upon which report from the Committee, the said Dr. Harris being called to his answer in the open house, as the manner is in such cases, and giving the house no satisfaction to clear himself touching the premises; it was resolved, and adjudged by the house, that he had committed several offences against the liberties and privileges of that house, in attempting, by indirect and unlawful means, to hinder a due election; and to alter the ancient course of elections within the said borough; and in scandalizing the proceedings and justice of the said committee: deserving the more punishment,
in

in regard he had abused the pulpit to his private malicious ends ; and that, for such his offences, he should be brought as a delinquent to the bar of the house, and be there sharply admonished, and reprov'd for such his faults ; and to confess the same there upon his knees ; and humbly to desire the pardon of the house : and upon the Sunday seven-night following, in the pulpit of his parish-church, in the entrance into his sermon, again to witness the same his fault, desiring the love of his neighbours, and promising reformation. Which judgement was afterwards pronounced, and executed accordingly in all points.

VI.

The Case concerning the Election and Return of the Burgeſſes for the Borough of Chippenham, in the County of Wilts.

TOUCHING the ſaid borough of Chippenham, there were three ſeveral petitions exhibited to the Committee; the firſt by John Maynard, eſq; complaining, that he the ſaid John, being duly elected to be one of the burgeſſes for the ſaid borough, in this parliament, Charles Maynard, his brother, by miſtake of his Chriſtian name, in two ſeveral indentures, was unlawfully returned in his ſtead; and prayeth redreſs according to juſtice.

The ſecond petition was in the name of the greater number of the burgeſſes of Chippenham, ſuppoſing, that they, having duly choſen John Pym, eſq; to be one of their burgeſſes; yet the bailiff of the borough, and ſome other burgeſſes
and

and inhabitants there, who ought not to have voice in such elections, had returned an indenture to the sheriff, who had returned it over into the chancery, wherein Sir Francis Popham was named burgeses for the said borough, instead of the said Mr. Pym; and prayeth redress also, according to justice.

The third petition was of the said Sir Francis Popham, complaining of the unlawful return of the said Mr. Pym in his stead; and prayeth redress, according to justice.

Upon these several petitions, and by the directions of several special orders of the house, the cause was heard six several times before the said Committee, in the presence of most of the parties, and witnesses and council on all sides; and thereupon finally the case appeared to be thus:

The said town of Chippenham being an ancient borough, that hath, time out of mind, sent two burgeses to the parliament; the indentures for the returns whereof, dated the 6th of February, 7 Edw. VI. and 19 Sept. 1 Mary, were made between the sheriff of Wilts, for the time being, of the one part, and such a one, by special name, as bailiff of the borough aforesaid, and the burgeses

of the same borough generally, without naming any, of the other part, under their common seal: but whether or no the same were incorporated, it appeared not. Queen Mary, by her letters patents of the 2d of May, in the first year of her reign, at the petition of the men and inhabitants of the said town and borough, granted that the same should consist, *de cetero*, of a bailiff and twelve burgeses, by the name of the Bailiff and Twelve Burgeses of Chippenham; and that there should be in the said borough two burgeses of the parliament; and that the bailiff and burgeses of the said borough, and their successors, upon the writ for election of burgeses for the parliament, to them to be directed, should have power to choose two of the said borough. After which letters patents, the form of indentures, for the said borough, continued to the same effect, until the 35 Eliz.; but then, a return was made, by indenture, between the sheriff, of the one part, and such a one, by special name, bailiff, and twelve more, by their special names, burgeses of the same borough, of the other part; which form continued constant until the time of this parliament. But it appeared, by proof of witnesses, that at the election for several parliaments in Queen Elizabeth's time, divers of the burgeses, inhabitants of the said borough,

E

called

called Freeman, claimed to have voices in those elections, though, liking the men that were chosen, complained not to the parliament for being excluded; and it also appeared, by proof of witnesses, to the satisfaction of the Committee, that for the election of their burgeses to the parliament, 1^o Jac. the burgeses, inhabitants of the said borough, called Freeman, were admitted, and did join in the election of John Hungerford, esq; and John Rowles, gentleman, to be their burgeses, for that parliament, and in payment of wages for the same to the said Mr. Rowles. Gifford Longe, now sheriff of the county of Wilts, having received his Majesty's writ of summons for this parliament, made a precept thereupon to the bailiff and burgeses of the said borough, for them to proceed to election accordingly. Whereupon it was admitted, that a lawful warning was given for a meeting to be had for that purpose, upon the 21st of January, 21 Jac. in the usual place; at which time there met the bailiff, and eleven of the twelve incorporated burgeses, at the place appointed, being an upper room, with the doors left open, and free for any man to enter that would.

Then the said precept being read, Mr. John Maynard, by the voices of the bailiff and all the

saïd eleven incorporated burgesſes there preſent, was clearly elected in the firſt place, and ſo pronounced and acknowledged, without contradiction of any; divers others of the burgesſes, inhabitants of the ſaïd borough, called Freemen, being at that time in the under room, not offering themſelves to come into the ſaïd upper room, nor to join in the ſaïd election, with the ſaïd bailiff and incorporated burgesſes.

And, for the ſecond place, the bailiff, and five of the ſaïd eleven incorporated burgesſes, gave their voices for Sir Francis Popham, and the other fix for Mr. Pym; and not being able to reconcile this difference, the bailiff, and all the ſaïd eleven incorporate burgesſes, agreed, and did adjourn the election for the ſecond burgeſhip until the twenty-third of the ſame month, in the ſame place, the ſaïd other burgesſes and inhabitants, called Freemen, continuing ſtill in the ſaïd under room, neither called to come up, nor offering to come up, nor denied to come up; and ſo the aſſembly for this time was diſſolved. At the time and place, appointed by adjournment, the bailiff, and all the twelve incorporated burgesſes met, and thirty-two of the ſaïd other burgesſes, inhabitants, called Freemen, did then alſo attend; whereupon en-

tering again into the election for the second bur-
geship, the bailiff, and five of the incorporated
burgesses, gave their voices for Sir Francis Popham,
and the other seven incorporated burgesses, for
Mr. Pym.

But then all the other burgesses, and inhabi-
tants, called Freemen, so attending as aforesaid,
being demanded by the bailiff, for whom they
gave their voices, did all give their voices for
Sir Francis Popham, and not one of them for Mr.
Pym.

Upon all which proceedings two indentures of
return were made, dated the said twenty-third
day of January, 21 Jac.

The first between the said sheriff, of the one
part, and the said seven incorporated burgesses,
by special name, who chose Mr. Pym, on the se-
cond part, with seven seals affixed, purporting an
election of the said Mr. Charles Maynard and Mr.
John Pym by them, as the greater number of the
said incorporated burgesses.

And the second indenture, between the said she-
riff, on the one part, and the said bailiff of the
borough

borough and the twelve incorporated burgesſes, by their ſeveral names, as well the ſaid ſeven who choſe and returned Mr. Pym, as alſo the other five who choſe Sir Francis Popham, and the ſaid thirty-two other burgesſes being freemen, though not of the incorporated company of the ſaid borough, by their ſpecial names, of the other part, with thirty-eight ſeals affixed, which is one for every name to the indenture, except ſeven, being the number that choſe and returned Mr. Pym, purporting an election of the ſaid Charles Maynard and Sir Francis Popham by the ſaid bailiff and twelve, and thirty-two. Both which indentures were returned into the chancery annexed to the ſaid writ of ſummons.

This being the ſtate of the caſe, ſome points were declared by the Committee, and ſome other points by them diſcuſſed, and reported to the houſe with their opinions, and there reſolved, as followeth :

Fiſt, The Committee, upon the evidence aforeſaid, and alſo the houſe, upon the report thereof, did forbear to give any opinion of the point of fact, whether the ſaid borough were a corporation by preſcription, before the ſaid letters patents of the

ist of Q. Mary, yea or no, as holding it not absolutely material to the matter in question; for that clearly a borough may, by custom, have lawful right of, and privilege to, send burgeses to the parliament, though it be no corporation; or if it could not, yet, rather than the right of such boroughs, wherein the commonwealth hath interest, should be void or destroyed for the want of being corporate, they should, and ought, to be taken for lawful corporations, by the name of burgeses or inhabitants, or by some other sufficient name, to this particular purpose; though to other purposes of taking and making grants of lands, or goods, or the like, they are no corporation.

Secondly, It was conceived by the Committee, and so reported to the house, and there resolved, that the said charter of Queen Mary did not, nor could, alter the form and right of election for burgeses to the parliament, within the said borough, from the course there before, time out of mind, held; so as if before this said charter, all the burgeses, and inhabitants, called Freemen, or any other larger number of qualified persons, had always used, and ought of right to make the election; then the charter, although it may incorporate this town, which was not incorporate before,

or

or may alter the name, or form, of the corporation there, in matters concerning only themselves and their own government, rights and privileges; yet it cannot alter and abridge the general freedom and form of elections for burgesſes to the parliament, wherein, as aforeſaid, the commonwealth is intereſted. For then, by the like reaſon, that it might be brought from the whole commonalty, or from all the burgesſes of a town, to a bailiff and twelve; ſo might it be brought to a bailiff and one or two burgesſes, or to the bailiff alone; which is againſt the general liberty of the realm, that favoureth all means tending to make the election of burgesſes to be with the moſt indifferency; which, by common preſumption, is when the ſame are made by the greateſt number of voices that reaſonably may be had, whereby there will be leſs danger of packing, or indirecť proceedings. And howſoever the ſaid letters patents, touching ſome other points, may have made an alteration in the ſaid borough; yet, touching the matter of election of burgesſes to the parliament, the form remaineth, and the ſame courſe is to be held as was of right, before the ſaid letters patent.

Thirdly, It was conceived by the Committee, and so reported to the house, and there resolved, that more than the bailiff and twelve incorporate burgesſes ought to have voices in the election of burgesſes to the parliament for Chippenham; for ſuch arguments as may be made to conceive the right of election, or who ought to be electors, out of the forms or words of indentures, ought not to be regarded, where the uſage and cuſtom of the elections hath not concurred with the forms of ſuch indentures; for the reaſons delivered in the caſe of Blechingley, and more ſtrongly in this caſe. For, in that caſe, the arguments out of the words, *Et alii homines*, tending to give a greater number of burgesſes, or inhabitants, intereſt in the election, which liberty the law favoureth, were not regarded, but rejected, in a caſe, where by conſtant cuſtom and uſage, the election ſtood reſtrained to a limited and qualified number.

And, in this caſe, if ſuch arguments ſhould be allowed, it would be to reſtrain the liberty of election againſt common right; where, by cuſtom and uſage, the ſame belonged to more voices than the bailiff and twelve incorporated burgesſes.

And,

And, whereas it was urged by the council of the said seven incorporated burgesſes, petitioners, that the words of the indentures of the 6 Feb. 7 E. VI. and 19 Sept. 1 Mary, and ſo after the charter until the 35 Eliz. being by a bailiff and burgesſes indefinitely, might well be ſatiſfied, if only the bailiff and twelve joined in the election, and made the return of thoſe indentures. And that then the conſtant courſe of the indentures, ſince 35 Elizabeth, ſhould expound the generality of the former precedents, to be taken only concerning a bailiff and twelve burgesſes.

To this it was answered, and reſolved, that, as the ſaid words, bailiff and burgesſes, might be true, if only the bailiff and twelve more were meant thereby; ſo are they more proper, if the bailiff and all the other burgesſes, freemen and inhabitants, be therein comprized: and for the courſe ſince the 35 of Elizabeth, it is to be intended, that it was only by colour of the ſaid void charter, and the ſaid precedents and indentures, paſſed in ſilence and without oppoſition. But the right of the uſage, howſoever the indentures were penned, appeareth clearly by the ſaid claim in

Queen

Queen Elizabeth's time; and proofs of the other burgesſes and freemen, inhabitants, joining in the election the 1 Jac. now almoſt twenty years ſince, appeareth clearly to be for more than the bailiff and the ſaid twelve to have voices in ſuch elections.

Fourthly, It was conceived by the Committee, and ſo reported to the houſe, and there reſolved, that Mr. John Maynard was duly elected for one of the burgesſes of the ſaid borough, upon the 21ſt of January, being the firſt day of meeting; albeit none but the bailiff and eleven of the twelve incorporated burgesſes were preſent at that meeting; for, taking it for granted, as it was ſo admitted in this caſe, that due warning was given to all the electors for the time and place of this meeting, then all ſuch as were abſent did loſe their voices by the law, and thoſe only which did appear might lawfully proceed to an election, which accordingly they did; and the attending of ſome other of the electors, in an under room, without offering themſelves to come up to the election, nor declaring themſelves to the contrary of Mr. Maynard's election, nor being denied acceſs thereunto, is nothing material, but all one as if they had totally abſented themſelves, by keeping
their

their houses, or going about their ordinary affairs.

Fifthly, It was clearly conceived by the said Committee, and so reported to the house, and there ordered accordingly, that the said Mr. Charles Maynard ought not to serve in the house, but that the return of him should be adjudged void, and a vacate thereof to be made, and the return to be altered, by turning the name of Charles Maynard into John Maynard, which was effected accordingly. For the commons in parliament are not to be concluded by the indentures, or return, of any county, city, borough, or port, if the same be not warranted by a due election, which ought to be the ground of every return in parliament. And albeit, that in other inferior courts of the common law, the court, and the party in that suit, are concluded by the false return of the sheriff, in a cause between man and man; and the party grieved thereby left to his action upon the case, for his remedy against the sheriff, to recover his damage for the wrong thereby done unto him. Yet in parliament, because the commonwealth hath an interest in the service of every particular member of the commons house of parliament, *and this court, and council of state and justice,*

justice, is guided by peculiar, more high, and politic rules of law and state, than the ordinary courts of justice are in matters between party and party; and, if in a case of a false return to the parliament, the house of commons should thereby be concluded, then should it be in the power of the sheriff to fill the parliament with persons never duly chosen, who, by presumption, will not be indifferent; and so may be a great means to overthrow, or much prejudice, the commonwealth; for which, no fine, or punishment, to be imposed upon the sheriff, or other parties, for such undue returns, could ever make sufficient satisfaction; and the statutes which, in the affirmative, do inflict any particular forfeiture, or penalty, against the sheriff, or any other, for making a false return to the parliament, are but for a further punishment and terror, and do not abridge, or take, any the antient and natural undoubted privilege and power of the said commons in parliament, to examine the validity of elections and returns concerning their house and assembly, and to cause all undue returns, in that behalf, to be reformed; and to punish the offenders, concerning the same, according to justice.

Sixthly,

Sixthly, It was conceived by the Committee, and so reported to the house, and there resolved, that the said Sir Francis Popham was duly elected in the second place, at the second meeting, 23 January; for the adjournment by the bailiff and eleven, who were all that effectually attended the first day, and could not then agree, was a good adjournment.

And, at the second meeting, it being resolved as aforesaid, that more than the bailiff and twelve ought to have voices in the election, Sir Francis Popham was then clearly chosen by plurality of voices of the electors, and consequently ought to be returned accordingly. But the return of Mr. Pym ought not to stand.

Seventhly, Touching the manner how the said returns, so made as aforesaid, should be amended, it was conceived by the Committee, and so reported to the house, and there resolved and ordered, that the said indenture, wherein Charles Maynard, together with Sir Francis Popham, were originally returned, being amended, and made John Maynard, instead of Charles Maynard; the said other indenture, wherein Mr. Pym
was

was so named and returned, should be withdrawn; and then John Maynard and Sir Francis Popham, who were the parties duly elected in the country, would also stand well returned upon record: and thereupon the said Sir Francis Popham was sworn and admitted into the house as a lawful member thereof.

Note also, That the said Mr. Pym, being duly elected, and returned one of the burgessees for the borough of Tavistock, in the county of Devon, continued still a member of the house for Tavistock, notwithstanding he was disallowed for Chippenham.

VII.

The Case concerning the Election and Return of Barons, or Burgeſſes, for the Port, or Borough, of Dover, in the County of Kent, being one of the Cinque Ports.

UPON two ſeveral petitions, exhibited to the ſaid Committee, the one in the name of the free barons, or freemen, inhabitants of Dover, being none of the jurates, or common council, there; and complaining, that they were not warned to come to the election of their barons, or burgeſſes, for this parliament, but unjuſtly excluded; and Sir Edward Cecil, knt. and Sir Richard Younge, knt. unlawfully returned, without having, or asking, the petitioners conſent in their election; and praying redreſs, according to juſtice.

The other by the mayor, jurates, and common council of Dover; alledging, that their proceedings,

ings, touching their said election and return, had been none other but such as had been used in like cases ever since the 3 Eliz. for above sixty years together; submitting, if they had offended, and praying direction for the future.

The matter was examined in the presence of the counsel and witnesses on both parties, and the case appeared to be thus :

That the said port, or borough, being to send barons, or burgeses, to the parliament, by prescription, or custom time out of mind used, and standing incorporated by the name of Mayor, Jurates, and Commonalty, which commonalty were antiently all the free barons, or freemen, inhabitants of the said port, or town, not being jurates, or chief burgeses there; but at a customary assembly, or court, called a Common-horn-blowing, because it is summoned by the blowing of a horn, holden in the town-hall of Dover, 26 Sept. 3 Eliz. had and holden by the then mayor and jurates of Dover, being at that time ten, besides the mayor and the whole commons, or commonalty, of the said town, whereof there were then present to the number of eighty-two; and, being assisted by their counsel learned in the law,

it

it was agreed that there should be thirty-seven of the discreetest commons, to be chosen by the mayor and jurates, who should have power, for and in the name of the whole commons, to choose all officers in this town, as burgeses to the parliament, and all other officers belonging to this town, which have been accustomed to be elected and chosen by the commons; and, at the same assembly, the said mayor and jurates did elect and appoint, according to the same order, or decree, full thirty-seven, out of the said eighty-two commons, to the purpose aforesaid; according to which ordinance, the said thirty-seven persons, and their successors from time to time supplied, have been called the common-council of the said port, or town, and they only for the whole commons, or commonalty there, have joined in the choice of the burgeses to the parliament, and other elections, directed by the said ordinance. The now mayor of Dover, having received a precept to proceed to election, caused notice, or warning thereof, to be given to the jurates, and to the said thirty-seven, called now the Common-council, for a general meeting to be had about business of the town, not expressing the particular cause. At which time and place, the mayor, jurates, and thirty-seven appeared, and divers other free

F

barons,

barons, or freemen, inhabitants of the said port, or town, though not summoned upon conjecture wherefore the meeting was, came, and claimed to have their voices in the election, and offered to join in the business; but, by the opinion and command of the mayor, and jurates, and great part of the thirty-seven, they were denied their voices, and excluded from the election; and then the mayor, and jurates, and thirty-seven, proceeded and chose the said Sir Edward Cecil and Sir Richard Younge, who were certified to the Lord Warden of the Cinque Ports, and by him returned into the Chancery, as lawfully elected.

Upon this case it was conceived by the Committee, and so reported to the house, and there resolved :

First, That the said ordinance of the third of Elizabeth, notwithstanding the antiquity thereof, and the usage according to the same ever since, ought not to conclude the right of the other free barons, or freemen, inhabitants of Dover, besides the thirty-seven, now called the Common-council; nor ought the same to bind, or prejudice, the privilege, or interest, of the commonwealth, by restraining the freedom of an election to the parliament,

ment, for the reasons delivered in the case of Winchester and Chippenham. Howsoever, peradventure as to the election of the officers of the town, touching their government there, and other matters concerning themselves, the same ordinance may be good; the validity whereof, in these respects, the said Committee and this house did forbear to dispute, as a thing indifferent to the business in hand.

Secondly, Whereas it was objected, that out of the long and constant usage, agreeable to the said ordinance, which hath continued for above sixty years, that the said ordinance should be taken but as a thing declaratory, and a confirmation of a former ancient usage and custom of the place, which may limit and restrain an election; albeit, no charter nor constitution can restrain the same: and it were inconvenient to disturb a course of election so long settled, but upon very clear matter, to control the same.

To this it was answered, and so conceived by the Committee, and by them reported to the house, and there resolved, that it appeareth by the said ordinance itself, that the same was a mere innovation; for that there was not any such name,

or number, of thirty-seven, within the town in former times; but all the thirty-seven were elected and appointed only by virtue of that ordinance, and at that very assembly, 3 Eliz. And the very body of the ordinance rehearseth, that the former elections of burgeses to the parliament, had been by the commons. So the said ordinance betrayeth itself, and maketh the matter plain, that it cannot possibly be taken for a declaration, or confirmation, of a former custom, but a mere introduction of a new course. And if there hath not been, time out of mind, such a qualified number of thirty-seven, it is then impossible that any custom, or prescription, can be settled in them, or for them.

Thirdly, It was conceived by the Committee, and so reported to the house, and there resolved, that the said warning for the election was utterly insufficient, as well for the generality thereof, as also for that the free barons, or freemen, inhabitants of Dover, who ought to have voices in the election, besides the mayor, jurates, and thirty-seven, called now the Common-council, were not warned; for which see the reasons delivered in the case of Winchelsey.

Fourthly,

Fourthly, It was conceived by the said Committee, and so reported to the house, and there resolved, that the said Sir Edward Cecil and Sir Richard Younge were unjustly returned, without any lawful election to warrant the same: for that divers of the lawful electors never were warned to attend the election, and some others of them which offered themselves, were wrongfully excluded from the election, in form as aforesaid.

Wherefore it was ordered, that a warrant should be made, which accordingly was made by Mr. Speaker, for a writ to go forth for a new choice to be had, of barons, or burgessees, for the said port and town of Dover; which new writ issuing accordingly, both the said Sir Edward Cecil and Sir Richard Younge, whom the house found altogether innocent of any practice touching their former election, or return, were lawfully chosen by all the rightful electors, and duly returned accordingly.

Fifthly, It was conceived by the said Committee, and so reported to the house, and there agreed and ordered, that no punishment should be inflicted upon the now mayor of Dover, for not

warning all the free barons, or freemen, there, inhabitants, to attend the said election; albeit of right they ought to have been warned, as persons by law interested in the election, the said ordinance and usage notwithstanding; because, by colour of the said ordinance and usage of sixty years, or more, thereupon following, it might well be presumed by the said mayor, following the course of divers of his predecessors, that of right they ought not to have been warned, and so the said ordinance and usage, by reason thereof, albeit it would not alter the right of election, when it was judicially brought into question, yet the same was sufficient to excuse the said mayor from punishment, so long as he did nothing of himself corruptly, or by practice, to any private end, but was merely misled by mistaking the law touching the validity of the said ordinance, and the pursuant usage thereupon had, by colour thereof.

VIII.

The Case concerning the Election and Return of one of the Burgeſſes of the Borough of Arundel, in the County of Suffex.

UPON a petition exhibited for, and in the name of, all the burgeſſes and inhabitants of the ſaid borough, complaining, that Sir George Chaworth, knt. was unduly returned for one of their burgeſſes for this parliament, inſtead of Richard Mill, eſq; who was duly elected, and ought to have been returned, deſiring juſtice and redreſs, according to their caſe.

The matter was duly heard and examined by the Committee, whereby the caſe appeared to be thus :

The mayor of the said borough having received a precept from the sheriff of the said county, to proceed to an election; it was admitted, that a time and place for the execution of the said precept was duly appointed, and lawful warning thereof given to all the electors. At which time and place divers of the electors met, and Sir Henry Spiller was duly proposed and elected in the first place, and so published and acknowledged, without contradiction.

And for the second place, there were proposed the said Mr. Mill and Sir George Chaworth; about ten of the clock in the forenoon, there being then present fifty-two electors, and no more; whereof twenty-seven were for Sir George Chaworth, and but twenty-five for Mr. Mill, as was afterwards discovered; albeit, for the present, it was not discovered which had the plurality of voices. And there came in four electors more, who all gave voices for Mr. Mill; and then the poll being demanded and granted, it was found, by numbering of the polls, and so thereupon declared and acknowledged, that Mr. Mill, at the time of the polling finished and pronounced, had twenty-nine voices, to twenty-seven, against Sir George Chaworth.

worth. Whereupon, about twelve of the clock, the mayor refusing to dissolve the assembly, all the electors departed, except the mayor, and the steward, and two more of the electors, who continued there till after five of the clock at night, sending, in the mean time, for such electors as had been formerly absent; and, by this means, between five and six of the clock at night, got the consent and voices of ten more; which, coming in one by one for Sir George Chaworth, made up in all thirty-seven voices for him, against twenty-nine for Mr. Mill.

Upon this matter and case, it was conceived by the Committee, and so reported to the house, and there resolved, that the said Sir George Chaworth was not duly elected, nor lawfully returned; but that the said Mr. Mill was duly elected, and ought to be returned accordingly; for, that by the voices of twenty-seven, against twenty-five, for Sir George Chaworth, the election was not finished, because it appeared doubtful which way the plurality of voices was until, by numbering the polls, it might be discerned; and they which were for Mr. Mill, did not yield, or acknowledge, Sir George Chaworth to be chosen by plurality of
voices,

voices, but the election continued still undetermined; and they which pronounced their voices for Sir George Chaworth, before the election fully finished, might have altered their voices, and have been for Mr. Mill, or for any other against Sir George Chaworth: whereof it followeth, that the four voices which came in for Mr. Mill, came in time enough, whilst the election was still in hand and unfinished, and so were good voices for Mr. Mill, making it twenty-nine for him, against twenty-seven for Sir George Chaworth. And touching the continuance there, of the mayor, and some others with him, after the election finished, which was fully accomplished upon the account, and pronouncing the number of the polls then present, especially by reason of their continuing there in so few a number, and for so long a time, till such an unseasonable hour: in case of a borough where, by presumption, the inhabitants dwell not far off, it was taken to be to no purpose, and the ten voices lastly given to be ineffectual and void, as coming after the election fully past and determined: or else it might be in the power of an obstinate and wilful mayor, or officer, to continue the election at his pleasure; and, peradventure, to gain his own purpose, by wearying out
the

the electors with attendance, to see the end or conclusion of the election. Wherefore, by order of the house, Sir George Chaworth was discharged, and put out of the house; and the said return was amended, and Mr. Mill admitted and returned instead of Sir George Chaworth.

IX.

The Case concerning the Election and Return of Burgesſes for the Borough of Newcastle Under Line, in the County of Stafford.

UPON a petition exhibited by John Keeling, eſq; complaining, that he being duly elected one of the burgeſſes of the ſaid borough, yet Richard Leveſon, eſq; and Sir Edward Vere, knt. who were neither of them elected, were unduly returned, and praying juſtice and reformation.

The matter was taken into conſideration, and the caſe appeared to be thus :

A meeting was had within the ſaid borough, for the election of their burgeſſes to the parliament; but it appeared not, neither one way nor the
3
other,

other, whether any due warning was given for the said meeting.

At, and in, this meeting, the said Mr. Leveson was clearly chosen for the first place, and so pronounced and acknowledged by all the electors present, without contradiction.

Touching the second place, the said Sir Edward Vere and Mr. Keeling were propounded, and divers voices given for the one, and divers for the other of them; and some doubt conceived who had the most voices. But upon a difference arising, what persons, inhabitants of the said borough, ought to have voices in the election, and who not, the poll being requisite to discern the truth who had the voices of most electors, was moved for and called upon, but not pursued by occasion of the said difference; but the assembly dissolved, and the said Mr. Leveson and Sir Edward Vere were returned.

Hereupon it was conceived by the Committee, and so reported to the house, and there ordered, that the said election and return of Mr. Leveson, for the first place, was good, and should stand.

Howbeit

Howbeit, it was objected and insisted upon, that by reason no due warning was made to appear for the said meeting, wherein he was chosen, therefore the said meeting was unlawful, and consequently the said election.

But it was answered and resolved, that albeit the precept for warning be in the affirmative, yet lawful warning, in all cases, is generally to be presumed, until proof be made to the contrary; for otherwise, it should be in the power of any one, upon a pretence of want of warning, to trouble any burghers of the house, and make him bring proof, though from never so remote a part of the kingdom, to prove warning given for his election, which might be inconvenient; and therefore, in a case of this nature, we must stand to general and reasonable presumption, until express proof be made to the contrary.

But, touching the second place, it was conceived by the Committee, and upon report thereof, so resolved in the house, that no election at all was made of any burghers whatsoever, for the reasons formerly expressed in the case of Winchelsey; and that the return of Sir Edward Vere was without
warrant

warrant and unlawful. And therefore it was further ordered, that the said Sir Edward Vere should be discharged out of the house, and a warrant, made by Mr. Speaker, for a writ to go forth to choose one new burges in the place of the said Sir Edward Vere.

X.

The Case concerning the Election and Return of Knights for the County of Cambridge.

APETITION was exhibited to the said Committee, by divers freeholders of the said county, complaining, that, albeit Sir John Cutts, knt. and Toby Palavicini, esq; were duly elected knights for the said county to serve in this parliament; yet, nevertheless, one Edward Ingrey, under-sheriff of the said county, had, by undue practice, caused Sir Edward Peyton and Sir Simon Steward, knts. to be falsely returned knights for the said county to serve in this parliament, who, by virtue of the said unjust return, had been received into the house accordingly. Whereupon, the said petitioners prayed relief.

This

This case being heard before the Committee, in presence of the parties and their council on both sides; divers witnesses on either part were produced and examined, and divers affidavits, taken before the masters of the chancery, were offered in evidence on the behalf of either party, but were not admitted to be read: and, in effect, the case resting wholly upon matter of fact, appeared to be thus:

That the said Edward Ingrey, the under-sheriff, who managed this election in the absence of the high-sheriff, read the writ of summons at the due time and place, in the town of Cambridge; and that the freeholders of the said county, having divers scholars of Cambridge, and divers serving-men and others, mingled amongst them, declared themselves, some for Edward Peyton and Sir Simon Steward, by calling upon their names, and going together in one troop, and others for Sir John Cutts and Mr. Palavicini, by calling upon their names, and going together in another troop, and so continuing for a good while. The under sheriff, assisted by some of the principal freeholders on both sides, took two several views of the said troops. But it was controverted and doubtful, upon either view, which troop had the greater

G

number.

number. Whereupon the poll was demanded on the behalf of Sir John Cutts and Mr. Palavicini. And the said under-sheriff, in words, promised, that he would swear the freeholders according to the statute, and so try out the right by the poll: but being engaged, as it should seem, for Sir Edward Peyton, he departed about twelve of the clock, without declaring who were elected knights of the shire, and went to the lodging of the said Sir Edward Peyton, in company of divers of the freeholders which stood for Sir Edward Peyton; and afterwards, without ever returning back to the place where the election was to be accomplished, caused the said Sir Edward Peyton and Sir Simon Steward to be returned as aforesaid.

And in this case it was conceived by the Committee, and so reported to the house, and there resolved, that no election at all was had, or made, of any one knight of the shire for the said county: but that all was void, by reason that the view being uncertain, and divers mingled amongst the freeholders who ought not to have voices, nor could be distinguished from the freeholders by the view, the poll was justly, and in due time, demanded; and the denying thereof, or not accomplishing thereof, in such case of doubt, where neither
side

side yieldeth to the other, turneth all into a nullity *. And therefore it was further ordered by the said house, that the said return made of the said Sir Edward Peyton and Sir Simon Steward, should be quashed; and that a warrant should be made by Mr. Speaker for a new writ to go forth, for the choice of two knights for the said county of Cambridge, to serve in this parliament; which new writ issued accordingly.

Secondly, It was conceived by the Committee, that the said Edward Ingrey, the under-sheriff, had committed an offence against the privileges of the house, in departing from the county-court without finishing the election by swearing and numbering the freeholders by the poll, as he ought to have done; and in causing the said Sir Edward Peyton and Sir Simon Steward to be returned, without any election to warrant the same; which seemed to be done not without suspicion of partiality in the said under-sheriff, towards the said Sir Edward Peyton. Whereupon it was ordered by the house, that the said Ingrey should be sent for, to appear in person to answer for himself; and

* See the reasons formerly expressed in the cases of Southwark and Newcastle Under Line.

being called up accordingly, he was heard at the bar, as the manner is; and giving no satisfaction, he was, by the order and judgement of the house, committed to the custody of the serjeant attending this house.

And it was further ordered, that he should acknowledge his fault, and make his submission at the bar of this house upon his knees, before his enlargement; which he performed accordingly.

And, lastly, that he should make a further acknowledgement of his offence in the said county of Cambridge, in the county-court there, immediately before the execution of the new writ.

Thirdly, Touching the said affidavits, it was conceived by the said Committee, and so reported to the house, and there declared and ordered accordingly, that they ought not to be admitted, or read, as proofs in this, or in any cause, touching elections and returns for the parliament: for that affidavits are, for the most part, cautelously penned by the parties sworn, or by their counsel, expressing only part of the truth, to the advantage of that side which they favour; and the parties which make such affidavits are not seen, to have their persons

and qualities considered of, nor are cross-examined for the discovery of the whole truth: or, if affidavits should be allowed, yet to allow these affidavits, taken before the masters of the chancery for things not pertaining to that court, to be used as good proofs in parliament, were derogatory to the honour and power of this house.

For albeit the writs of summons for the parliament issue out of the chancery, and are returned into the crown-office of that court, and there kept; yet the house of commons in parliament, is a distinct court of record of itself, and the going forth of the writs from the chancery, is only as writs go forth from thence, returnable into any other court or place; and they must needs go forth from thence, where the great seal of England is kept, wherewith they are to be sealed; and the clerk of the crown in chancery hath but the custody of the writs and returns, as for, and to, the use of the commons in parliament, and as records belonging to the house of commons; and he is their officer, and attendant upon the same house to this special purpose; and it were ill, by use suffering to be made of such affidavits as of lawful proofs, to give any colour, or countenance, to the chancery against the commons in parliament; and

it was publicly attested by divers of the most ancient parliament-men, now members of this house, that, in their first times of sitting in parliament, no such course of affidavits in chancery, touching parliament business, was practised or heard of. But this form is a meer novelty, and a late dangerous innovation, fit to be abolished.

And whereas it was objected by some, that it were not good for the house to disallow the use of all affidavits taken in chancery; because, as they supposed, this house cannot administer an oath:—Hereunto it was answered and alledged, that, it is true, this house hath of late years very much abstained from administering of oaths, but it was not granted, that this house could not administer an oath. Howbeit the dispute and resolution thereof was, at this time, declined.

XI.

The Case concerning the Burgeſſes of Agmondeſham, alias Amersham, Marlow, and Wendover, in the County of Bucks; and Hertford, in the County of Hertford.

(It is fit to be recollected, that Mr. Brynne appears diſſatisfied with the orders of the Commons for reſtoring theſe & other boroughs. 3. Bryn. Brev. Parl. 238. a.)

THERE were four ſeveral petitions exhibited to the ſaid Committee by the burgeſſes of the ſaid ſeveral boroughs; ſetting forth, that the ſame were ancient parliamentary boroughs by preſcription, or cuſtom time out of mind uſed, and ought thereby, and of right, to ſend each of them two burgeſſes to ſerve in every parliament; offering to prove the ſame by record.

And complaining, that the ſheriffs of the ſaid counties for the time being, both now, and for many parliaments laſt paſt, had neglected to ſend warrants unto them for the election of ſuch burgeſſes, whereby they could not, nor did, proceed

to such election; praying, that their right therein, might be considered of, and some order thereupon taken, agreeable to justice. Which petitions being held material, the matters thereof were seriously examined and discussed by the said Committee. And upon hearing of Mr. Hakevill, being of counsel with the said boroughs, in the presence of Sir Robert Heath, his Majesty's solicitor general, being one of the said Committee, and after long debate thereof, it was alledged by the said Sir Robert Heath, that information had been given to the King's Majesty, that very many boroughs, in several parts of the realm, might make the like claim that those four boroughs did, which might, peradventure, give occasion of offence to his Majesty, if they should seek to be all restored, by the example of these boroughs, and so cumber the commons house of parliament with an excessive and unnecessary number. Hereupon the Committee ordered, that Mr. Noy and Mr. Selden, being two of the said Committee, and some others of the house, should make search among the records concerning this business, and make report, to the Committee, what they found concerning the same; until when, further debate, or proceeding, touching the same, was respited.

According

According to this direction and order of the Committee, a search was had, and a report made to the Committee, by the said Mr. Selden, that there were but two boroughs, unrestored, standing in the like case with the said boroughs now in question. Whereupon the Committee proceeded to the further hearing and final ordering of the matters in question, and so found the case concerning the said several boroughs, to be thus:

In the bundle of returns, or rolls, of the names of those bishops, abbots, and other prelates, which were summoned to come to the council, or parliament of the king, holden at Northampton the 15 Nov. 1 E. I. whereon are indorsed the names of the knights, citizens, and burgeses, which came to the same parliament, it appeared, that in the same parliament, there served as burgeses for the said borough of Agmondesham, alias Amersham, Richard de Mathson and Ralph de Gande; for the said borough of Marlow, Thomas Callehoge and Adam Richard; for the borough of Wendover, Walter de Kent and John Sandewell; and for the said borough of Hertford, John Hubert and John de Westeat; and in a schedule annexed to the writ of summons for the parliament, directed to the sheriff

Quere as to this date, D.

Brady asserts, that the earliest writ or summons of burgeses to parliament was in 23. E. 1.

in this Mr. Tyrrell agrees, that it

is so far as relates to the fact of there

being no earlier summons of burgeses on record, than

this writ of summons of burgeses for the parliament of 1 E. 1.

He contends from the fact of this writ of summons as well as from other evidence that burgeses had been a part of parliament long before the reign of E. 1.

sheriff of the said county of Hertford, bearing teste at Fulham, 23 April, 26 E. I. and returnable at York *in instante festo Pentecostis*, it appeareth that John de Westeat and Simon Balle were returned burgeses for the said borough of Hertford, at that parliament; and by the indorsement and return of the writ of re-summons for the parliament, directed to the sheriff of the said county of Bucks, bearing teste at La Rosk, 26 Sept. 28 E. I. returnable at Lincoln *in octabis S'ti Hillarii prox' futur'*, it appeareth, that Robert le Warnor and Ralph at Grove, were re-summoned to serve according to the said writs, as burgeses for the said borough of Agmondesham; and Richard de Mound and Richard le Veel, for the said borough of Marlow; and Walter de la Hall and John de la Bury, for the said borough of Wendover; and are mentioned by the said indorsement and return, to be the same burgeses who came to the last parliament, or session of parliament, intended by the said writ of re-summons. And by the return made and indorsed upon the writ of re-summons for the parliament, of the same teste and return, directed to the sheriff of the said county of Hertford *, it

* Mr. Hakevill's MS. of this case ends here abruptly, and at the bottom of the page is the following entry made by Mr. Hakevill:

appeareth

appeareth that Simon Lovely and Ralph de Parstead were re-summoned to serve, according to the said writ, as burgeses for the said borough of Hertford; but no records, for any returns for parliament, were produced from the 28 E. I. until this day, proving that the said borough had, since that time, sent any burgeses to the parliament.

Upon this case the Committee was of opinion, that the four several boroughs had right to send two burgeses each to every parliament, and they ought to be all admitted accordingly; ordering withall, that their proceedings and opinions

“ The borough of Weobly, in the county of Hereford, being an
 “ ancient borough-town, but having discontinued to send about
 “ 300 years, it appeared, by a return made about 300 years past,
 “ that they did not send burgeses *propter paupertatem*. It was,
 “ upon debate, ordered by the house, in the parliament 3 Car.
 “ that a writ should issue out for the choosing of burgeses there.
 “ Whereupon there were returned, as burgeses for that borough,
 “ Mr. William Walter and Mr. William Tomkyns. At the same
 “ time the like order was made for Milborne Port in the county
 “ of Somerset, the cases being all one. For Milborne-Port
 “ were returned Sir Nathanael Napper and Mr. Philip Digby,
 “ and the elections were by all the inhabitants.—See these cases
 “ at large in my Reports of 3 Car. for then I sat in the
 “ chair.”

should

should be reported to the house, together with the reasons of such their opinions, which was accordingly performed, and the reasons were these :

First, It was agreed, that the meer right by custom, or prescription, for a borough to send burgeses to the parliament, ought properly to be proved, by matter of record, out of the returns and rolls of memorandums, touching former parliaments and other matters of record, and not by testimony of witnesses, touching any matter of fact of their own knowledge, save for proof of the copies, or contents of records concerning the same; howbeit, touching the manner how election of burgeses in any borough ought to be made, testimony of witnesses may be used. Whereupon it was concluded, that the want of proofs by witnesses, to supply, of latter times, the custom, or prescription, of the said several boroughs to send burgeses to the parliament, was not any material defect.

Secondly, It was agreed by the said several records of 1 E. I. and 26 E. I. and 28 of E. I. was sufficient proof that the said four several boroughs respectively, had once good right to send burgeses to the parliament, however they came since to be discontinued.

discontinued. For thereby it appeareth expressly, that the burgeses for every of the said boroughs, did serve three times, at least, in parliament; namely, in 1 E. I. and in the parliament, or sessions of parliament, in 28 E. I. for, by the return of the summons for 28 E. I. it was evident, that the burgeses which were returned for, and to come to, that parliament, or sessions, were the same which came to the then last parliament, or sessions of parliament, which seemeth was in the 27 E. I. and it is twenty-seven years between the first and the last record, whereby it so appeareth, that the said boroughs sent burgeses to the parliament: in which mean time, and long time before, were many parliaments holden; whereof the writs of summons and returns were not now extant to be found, whereby the said burgeses were deprived of the means to prove, by record, their right and usage to send burgeses to the parliament.

And therefore the more credit is to be given to these few records, of this nature, which are extant; and it is not to be presumed, if these boroughs, or either of them, had usurped 1 E. I. that then, after so long time, they should have been returned again in 27 or 28 E. I.

*** Mr.

* * Mr. Willis, in his Not. Parliamentaria, vol. I. p. 138, gives the following curious history of restoring these boroughs, which may not be deemed improper to be hereto subjoined.—“ In the parliament held 21 Jac. it being discovered, “ by a search made in the Tower of London, amongst the ancient parliament writs, by Mr. Hakevill of Lincoln’s-inn, “ that, in former times, there had been burgesses returned for “ three boroughs in the county of Bucks, which, of later times, “ had not sent any burgesses to the parliament, namely, the “ boroughs of Wendover, Agmondesham, alias Amer sham, and “ Great Marlow, petitions were referred to the commons house of “ parliament, then sitting, in the names of those three boroughs, “ that they might be restored to the liberty, or franchise, of “ sending burgesses to the parliament, and that a writ might be “ directed to the sheriff of Bucks for that purpose. To which “ petition the house inclining, notice thereof was given to the “ King’s Majesty, who declared himself unwilling to have the “ number of the burgesses increased, declaring he was troubled “ with too great a number already, and commanded his then “ solicitor, Sir Robert Heath, being then of the house of commons, to oppose it what he might; and most of the commons then of the house, understanding the king’s inclinations, “ did their utmost endeavours to cross it. The main and legal “ objection made against it was, by the long discontinuance and “ disuse in not sending burgesses for above 400 years, the franchise for sending burgesses to parliament was lost. On the “ other side, on behalf of the boroughs, it was confessed, that “ since 28 Edw. I. it was not found by any record extant, that “ these boroughs had sent any burgesses; but it was alledged for “ them, that most of the ancient records, since that time, are “ lost; which, if they might be found, it was conceived would “ declare that they had sent many times since 28 Edw. I.

“ *Secondly*, It doth appear that sheriffs, in those times, were ne-
 “ gligent in sending their precepts to boroughs to make choice
 “ of their burgesses, for divers statutes were made to compel
 “ the sheriffs thereunto; so that the not sending the burgesses
 “ was not to be imputed to any neglect in the boroughs, and
 “ therefore the negligence of the sheriff ought not to turn to
 “ their prejudice. *Thirdly*, The use, in these ancient times,
 “ being, that the burgesses attending in parliament were main-
 “ tained at the charge of the boroughs; when the boroughs
 “ grew poor, the boroughs, only for that reason, neglected to
 “ send their burgesses to the parliament; therefore, now seeing
 “ they were contented to undergo that burthen, or to choose
 “ such burgesses as should bear their own charges, there was no
 “ reason to deny that petition. *Lastly*, It was urged in behalf
 “ of the burgesses, that the liberty of sending burgesses to par-
 “ liament, is a liberty of that nature and quality, that it cannot
 “ be lost by neglect of any borough; for every burgess so sent
 “ is a member of the great council of the kingdom, maintained
 “ at the charge of the borough; and if such a neglect may be
 “ permitted in one borough, so may it be in more, and con-
 “ sequently in all the boroughs of England; and then it might
 “ follow, that, for want of burgesses, there should be no par-
 “ liament. And as for these boroughs, it did anciently appear,
 “ that they were parliament boroughs by prescription, and not
 “ by charter; for every of them had their several forrens, and
 “ did pay fifteens, as parliamentary boroughs, and not as other *What in does*
 “ boroughs or towns. *of difference*
consist?

“ This was the substance of that which was then alledged for
 “ them by their counsel, Mr. Hakevill of Lincoln’s-inn, be-
 “ fore the Committee for privileges and returns; at which time
 “ Mr. Glanville, since created serjeant, sitting in the chair, did
 “ put it to the question; and, upon the question, it was resolved,
 “ that

"that a warrant should be made to the clerk of the crown, to
 "make writ to the sheriff of the county of Bucks, for the
 "choosing of burgeses in those three boroughs; of which reso-
 "lution of the Committee his Majesty taking notice, did, before
 "the same was reported to the house, send unto the two chief
 "justices, requiring them to send him their opinions in the
 "point, who thereupon desired Mr. Glanville to acquaint them
 "with such reasons as had been alledged by Mr. Hakevill.
 "Whereupon the chief justices certified his Majesty, that it was
 "just, a writ should be awarded accordingly: and the opinion
 "of the Committee being reported to the house of commons,
 "the same was there confirmed, *nemine contradicente*. Where-
 "upon a warrant, under the Speaker's hand, was made to the
 "clerk of the crown in the chancery, for the making of such
 "a writ, which was issued out accordingly; and thereupon were
 "elected and returned to serve in the same parliament the bur-
 "geses hereafter named: for Amertham, Mr. William Hake-
 "vill, Mr. John Crew; for Wendover, Mr. John Hampden,
 "who beareth the charge, Sir Alexander Unton; for Marlow,
 "Mr. H. Burlace, Mr. Cotton."

+ Ley was ch. j. of B. K. & Hobart
 of C. B. in 21. Jan.

XII.

The Case concerning the Election and Return of Burgesſes to the Parliament, for the Borough of Stockbridge, in the County of Southampton.

UPON a petition exhibited by Thomas Parſon and others, inhabitants of the ſaid borough, complaining, that Sir Richard Gifford and Sir Henry Holcroft, knts. were unduly returned burgesſes for the ſaid borough; partly in reſpect no ſufficient warning, or notice, was given to the electors, of the time and place appointed for the election; and, partly, upon pretence of an undue preparation and practice, to get the ſaid Sir Richard and Sir Henry unlawfully returned, the indenture for that purpoſe being ſuppoſed to be ingroſſed and ſealed before the meeting.

The matter was heard and examined, but the petitioners failed in their proof. Nevertheless the

H

Committee

Committee delivered their opinions in this case, as in the case touching the borough of Newcastle: That, for the reasons there expressed, the proof of want of warning, or notice, of the time and place of election, ought to be made by him that complaineth of the election, or else it shall be presumed that there was a sufficient notice, until the contrary appear. So they gave order to report such their opinion to the house; and that they held the election and the return of the said Sir Richard and Sir Henry, to be good and effectual. Which, upon report thereof, was ordered by the house accordingly.

XIII.

The Case concerning the Election of one
of the Knights of the Shire, for the
County of Gloucester.

UPON a petition, exhibited by Robert Poyntz, esq; supposing, that John Dutton, esq; and the said Mr. Poyntz were duly chosen knights of the shire for the said county, to serve in this parliament; and that one William Bird, under-sheriff of the said county, had nevertheless unduly procured the said Mr. Dutton and Sir Thomas Estcourt, knt. to be returned as knights of the said shire; humbly praying, that the said return might be amended, and the said Mr. Poyntz received in the place of Sir Thomas Estcourt.

The matter of the said petition was examined by the said Committee, in presence of counsel learned, and witnesses on both sides, and thereby the case in substance appeared to be thus;

At the county-court, holden at Payneswick, in the said county, upon the 14 Feb. 21 Jac. the said under-sheriff read the king's writ, and began the election between the due hours.

Whereupon Mr. Dutton, Mr. Poyntz, and Sir Thomas Estcourt, were called upon by the freeholders in such sort, that the said Mr. Dutton was agreed and admitted, without contradiction, to be chosen in the first place; but some doubt was conceived, whether Mr. Poyntz or Sir Thomas Estcourt had the more voices for the second place. Then was the poll, in due time, demanded; but Sir Thomas Estcourt declared openly, that he did give his voice for Mr. Poyntz; and as not desiring the place for himself, but praying to be spared. Nevertheless the court and freeholders were adjourned immediately to Payneswick church, as to a fit place, to number the electors by the poll, which was there accomplished the same day: and, in conclusion, Sir Thomas Estcourt had above a hundred voices of freeholders more than Mr. Poyntz; but withall, it appeared, that some few freeholders, who had pronounced for Mr. Poyntz, went away after the poll demanded, and before their names, or voices, were taken, or recorded;
and

and some other freeholders, which came to the place after eleven of the clock, while the election was then in hand, were admitted to give voice, and numbered for Sir Thomas Estcourt.

The questions in law, which hereupon were moved and debated, were these :

First, Whether Sir Thomas Estcourt was eligible; against his own consent, and contrary to his desire; and it was held clearly, that he was; and that no man, being lawfully chosen, can refuse the place; for the county and commonwealth have such an interest in every man, that when, by lawful election, he is appointed to this public service, he cannot, by any unwillingness, or refusal, of his own, make himself incapable; for that were to prefer the will, or contentment, of a private man, before the desire and satisfaction of the whole country, and a ready way to put by the sufficientest men, who are commonly those, who least endeavour to obtain the place.

Secondly, Whether the departure of some freeholders, before they were polled, had made the election void. And it was also agreed, for clear law, that it had not; because it appeared not, that

any undue, or indirect means, was used, to make them depart before their time, and if they went away of their own accord, their voices are lost, as if they go away about their own private business, or because they dwell afar off, or for any other cause, without indirect procurement; the rather, for that if the going away of a few freeholders, of their own accord, might make void an election, then it should lie always in the power of those which had the fewest number of voices, by their departure before the poll finished, to turn any election into a nullity at their pleasure, which would be most inconvenient.

Thirdly, Whether such as came after the poll begun, and after eleven of the clock, did come time enough to give their voices. And it was held that they did; for all favour is to be afforded, in allowing voices to as many freeholders as reasonably may be had, for the choice of those, by whose voices in parliament, they and their heirs are to be bound for ever.

And although the statute doth appoint when the election shall begin, namely, between nine and eleven of the clock, yet it determineth not within what time the same shall be concluded.

But if the election be begun within the lawful hours, it may be in dispatch a whole day, or more days, by adjournment, if need require; for in some countries, there are so many freeholders as cannot be polled, or numbered, in one, or divers, days; and he that cometh any time of the day, while the election is in agitation and unconcluded, cometh time enough to give his voice, the whole election being but one continued act in law. So it was reported to the house, from the Committee, upon the whole matter, that Sir Thomas Estcourt, in the opinion of the Committee, was duly elected and returned. Which opinion of theirs was confirmed and ordered by the house accordingly.

XIV.

The Case concerning the Election of one of the Burgeſſes for the Borough of Cirenceſter, in the County of Glouceſter.

UPON a petition exhibited by Thomas Deaton, Walter Woodward, and divers others, inhabitants of the ſaid borough, on the behalf of themſelves and Sir Maurice Berkeley, knt. complaining, that Henry Poole, eſq; and the ſaid Sir Maurice Berkeley being duly choſen burgeſſes for the ſaid borough, Sir William Maſter, knt. who was not elected, was unlawfully returned in the place of the ſaid Sir Maurice, by the ſiniſter practice and procurement of William Bird, the under-ſheriff; praying the matter might be examined, and the return amended, by putting in Sir Maurice Berkeley inſtead of Sir William Maſter. The ſame was heard and examined accordingly, in the preſence of the parties, witneſſes, and counſel, on
both

both sides. Whereupon the case, in substance, was found to be thus :

The said borough had, time out of mind, sent two burgeses to serve in parliament; but it is not incorporate, neither did there any certain custom, or prescription, appear, who ought to be the electors there.

The general writ of summons for this parliament, being come to the hands of the sheriff of the said county, he directed his precept, or warrant, to the said borough, to authorize them to proceed to election.

But some doubt being conceived, who ought to have voice therein and who not; the opinion of a neighbouring serjeant at law was taken in the point, who set it under his hand, that he thought only the freeholders of the lands, within the borough, ought to have voice in election.

At the time and place appointed for the election, the said under-sheriff read the precept, by commandment of the bailiff; and then they went to the elections, wherein Mr. Poole was clearly elected for one of the burgeses, in the first place, by
most

most voices, without contradiction, and so declared and admitted.

In the next place it was conceived, that Sir William Maister had the greatest number of voices of the inhabitants present, and so declared by the bailiff; but some question being made by the competitors, and others, how the election should be made, whether by the voice of all the inhabitants, or else only by the voices of the freeholders; the said competitors and their friends did agree, that the election should be only made by the freeholders; which agreement, the said under-sheriff there present, well knowing all the premises, did publicly declare. And it was demanded, on the part of the said Sir Maurice Berkeley, that the freeholders might be numbered by the poll, thereby to discern clearly who had the most voices of freeholders only.

The poll being demanded only in this manner, and so granted, some of the inhabitants went away unpolled; and the assembly being adjourned into the church, the freeholders were there all polled by the under-sheriff, in the presence of the bailiff, an oath being first administered to every elector

elector to declare whether he was a freeholder, or not, before his voice was admitted.

The poll being finished, Sir William Master had five voices of freeholders more than Sir Maurice Berkeley; and then the assembly being adjourned back to the town-hall, where it began, it was solemnly propounded, by the bailiff, to the whole assembly, to know whom they would have in the first place, who answered all, "Mr. Poole," without a negative voice; and for Sir William Master, in like sort, in the second place. Whereupon they were returned accordingly.

This being the case, these questions were thereupon moved, debated, and resolved in the Committee :

First, That there being no certain custom, nor prescription, who should be electors, and who not, we must have recourse to common-right, which, to this purpose, was held to be, that more than the freeholders only ought to have voices in the election; namely, all men, inhabitants, householders, residents within the borough.

Secondly,

Secondly, That the under-sheriff being present at the election, did not vitiate the election, albeit, in truth, he had nothing to do in the matter after the precept once directed and delivered to the borough; but his managing the election, by the command of the bailiff, and in his presence, was only as a clerk, or minister, to him, and not in quality of a sheriff, or under-sheriff.

Thirdly, That the agreement of competitors, or any others, cannot alter the law, or make an election, by freeholders only, lawful; where the same ought to have been by all the inhabitants, householders, and residents.

Fourthly, By the going away of some inhabitants, who had voice in the election, before they were polled, did not impeach the election. For that it appeared not that they went away through any fraud, or practice, of Sir William Master, or any other on his behalf, but rather through their own ignorance, in mistaking the law, who should be electors; for the opinion delivered by counsel learned, the agreement of the competitors, and the declaration of the under-sheriff, could not any wise be supposed of malice, or ill meaning, and then

then *ignorantia juris non excusat*. Wherefore, if some electors did withdraw themselves, thinking they had no voice, whereas indeed they had, this was nothing to the purpose, but as if they had never come to the place, or departed of their own accord, before the election finished. In which case, the electors so departing, lose their voices; but the election subsequent, is not thereby prejudiced.

Fifthly, That the administering an oath to the freeholders in a borough, was an unlawful act: for such an oath is only to be given in the county court, by the statute, in case of choosing knights for the shire, and not in case of choosing burgessees within a borough.

Sixthly, That the polling, or numbering, of the freeholders only, was an unlawful and void act, they not being the sole electors.

Seventhly, That the swearing of the freeholders, and polling of them, however the same might reflect upon the under-sheriff, or others, in point of misdemeanor; yet the same did not, nor could, make void the election of Sir William Master, if otherwise he had a substantial and good election.

That,

That, upon the whole matter, Sir William Master was well elected by the greater number of the due electors, namely, of the inhabitants, householders, tenants; for when he was declared by the bailiff to have the greatest voice, and no man contradicted the same, nor demanded the polling, or numbering, of all the inhabitants so present, as admitting and allowing, that of such kind of persons he had the most voices, but demanded the poll only of freeholders and of none others, it was a void demand of the poll; for the rest, and all that followed thereupon, was meer surplusage and idle, the election being duly finished and accomplished before. But if the poll had been demanded of all the inhabitants, householders, tenants, then if the same had not been granted and taken accordingly, the election had been void, and a new writ must have gone forth to choose another in the place of Sir William Master; and if any one had rested unsatisfied that Sir William Master had the most voices of rightful electors, he might have demanded the poll of them at any time, before the assembly was dissolved, which lasted all the while the freeholders were in polling, and afterwards till Sir William Master

Master was the second time, and finally, declared burgeses in the second place.

The case, with the opinion of the Committee, being afterwards reported to the house, it was there resolved and ordered, upon the whole matter, that Sir William Master was duly elected and returned for one of the burgeses of the said borough.

XV.

The Case concerning the Election for Haverfordwest, in the County of Pembroke.

UPON a petition, exhibited by Sir Thomas Cannon, knt. as well on the behalf of himself, as of the said town and county ; it was specially set forth in the said petition, how the said Sir Thomas Cannon was duly elected burghers for the said town and county ; and that yet, nevertheless, Lewis Powell, esq; was unduly returned in his stead. Wherefore the said Sir Thomas desired the matter might be examined, and justice done in the premisses.

At the day appointed for hearing thereof, divers questions in law were moved by the said petitioners council, and some matters in fact controverted between the parties, which, in the end, rested chiefly upon the validity and credit of an instrument

instrument produced by Sir Thomas Cannon. Whereupon, by order of the Committee, a letter was written to Sir John Stepneth, knt. and bart. and Sir William Wogan, knt. to examine and certify touching the validity and truth of the said instrument, according to the prescript of the letter; and the council on both sides were directed to agree the case, and so present it to the Committee; but before the return of any certificate from Sir John Stepneth and Sir William Wogan, time was set, by his Majesty, for the concluding of this session of parliament, in such sort, as the matter of fact, or matters in law, touching this business, could not any further be examined, or resolved, in this session.

Whereupon it was moved and debated in the Committee, whether the matter of this petition might not be reserved and adjourned, to be examined and ordered in the next session.

And it was agreed by the Committee, and so reported, that it might; for the petitioners are in no fault, having duly exhibited and prosecuted their complaint from time to time. And as the same return, if it be grounded upon a good election, is sufficient to enable Mr. Powell to serve

in another session; so, if his election be undue, he may as well be put out then as now, if there be cause. Besides, it tendeth more to the indifferent service of the house and kingdom, to have an undue election avoided at any time, than to suffer time to run against the house, and conclude them to be served with a person that was never chosen, only because he could not be removed the first session. *Ut nullum tempus occurrit regi, ita nec reipublicæ.* That election which was not good at the first, cannot be made good by tract of time; and if an unjust election, complained of in the first, may not be examined, and ordered, in the next session, it will so far encourage the delinquents, by delays, to protract the hearing of their causes, that, by this means, many undue elections may pass unredressed.

This opinion of the Committee being reported to the house, it was there resolved and ordered, that the matter, touching the said election, should rest just in the state as now it did, till the next session. And then to be handled and determined, as it might have been in this, if we had now sitten longer together.

XVI.

The Case concerning the Election of one of
the Burgeſſes for the Borough of Malms-
bury, in the County of Wilts.

APETITION was exhibited by Thomas Baskerville, and divers others, inhabitants of the ſaid borough, ſuppoſing, that Sir Edward Cecil and Sir Edward Warden, knights, being duly elected, and their indentures ſealed accordingly, the name of Sir Edward Cecil was afterwards, by corruption and abuſe, raſed out, and the name of Sir Thomas Hatton put in; and ſo the indenture returned by the ſheriff, charging the abuſe upon John Radcliffe, Thomas Waite, and others; and praying the return might be amended, and the miſdemeanor puniſhed according to juſtice.

To this purpose a day was assigned for the hearing of the cause, but none of the petitioners attended there to make good the surmises of the petition by proof; neither did any other, as *amicus curiæ*, move, or offer, any thing material to retard the Committee from declaring their opinions, in approbation of the election and return of Sir Thomas Hatton: wherefore it was by them thought fit, for the saving of time, and the more speedy settling of the house, that the matter of this petition should be rejected, and the election and return of Sir Thomas Hatton ratified and confirmed. Which opinion of the Committee being reported to the house, the same was there resolved and ordered accordingly.

XVII.

The Case, touching the Election of the
Knights of the Shire for the County of
Middlesex.

APETITION was exhibited by Richard Bancroft, and other freeholders for the said county, complaining, that, whereas Sir Gilbert Gerrard, bart. and Sir John Franklyn, knt. were duly chosen, yet Sir John Franklyn was not returned, but Sir John Suckling, knt. comptroller of his Majesty's household, was unduly returned in his stead. Which matter they prayed might be examined, and the return amended, according to justice, and the privilege of the commons in parliament.

This petition was delivered in by the hands of one Mr. Roberts, a member of the commons house, and a day was appointed for the hearing

of the matter, in the presence of counsel and witnesses on both sides; but then it was declared to the Committee, that the petitioners being better informed and advised now than when their petition was first preferred, desired to withdraw the same, which also was attested by the said Mr. Roberts, and two other members of the house.

Upon this it was moved and debated, whether the Committee, *ex officio*, might, or ought, to proceed and examine the cause, Yea or No. And it was holden clearly, that they were not to be concluded by the neglect of the parties in not prosecuting their complaint, which peradventure they might desert, by some underhand combination, to the prejudice of the whole kingdom, which hath an interest in the election of every member of the commons house of parliament; the ill consequence which might follow, by occasion of such as shall there serve without due election, trenching deeply upon the rights and liberties of the commonwealth. Nevertheless the house of commons, in such case, have their election to examine the matter, *ex officio*, or to confirm the return already made, at their pleasure, as they see cause in their discretion; for they are *a council of state and court of equity, touching things appertaining*

to their cognizance, as well as a court of law; and they may of themselves question any election, or return, although no party grieved do ever complain.

But, touching the case in question, for so much as there appeared no suspicion of fraud, or practice, for withdrawing the petition, and so good testimony was given to the contrary thereof, the Committee thought fit it should be withdrawn, as was desired; and that the election and return of Sir John Suckling should be allowed for good: which opinion being reported to the house, the same was there approved and ordered accordingly.

XVIII.

The Case concerning the election and Return of a Burgess for the Borough of Monmouth, in the County of Monmouth.

SIR George Moore, knt. gave information to the rest of the Committee, that Walter Steward, esq; who was born in Scotland, in the time of Queen Elizabeth, but long since made a denizen of England by letters patent of his Majesty, being elected and returned as burgess for the said borough, had forbore to come into the house, until he might have the opinion of the house, whether he were a person eligible to serve, Yea or No.

And therefore moved, that the Committee would consider of the case, and give some direction therein; alledging withall the cases of Sir Horatio

ratio Palavicini and Levinus Monke, both aliens born, and only denized by patent, who were permitted to serve as burgessees heretofore in the commons house of parliament. But hereunto it was answered by divers of the Committee, that no question was made, nor exception taken to the return of those aliens for burgessees; in which case it did not appear then to the house that they were such; and, *prima facie*, every one that is returned, is presumed to be capable of the place, and well elected to the service, until the contrary be shewed and proved, or confessed, to the satisfaction of the house.

Wherefore, if this gentleman, Mr. Steward, had come into the house, he might have served till he had been duly removed; and, peradventure, no exceptions would have been taken to him at all, or in a long time.

As for example, divers infants, under the age of twenty-one years, have been elected burgessees, and so returned, who regularly are incapable of this service; yet, because the law presumeth them to be of full years till the contrary be made appear, they may serve well enough till they be displaced; and the suffering of some such, by
connivance,

connivance, to serve in the house, is no proof that therefore infants are capable of the place.

Therefore the question touching this particular of Mr. Steward, being now moved, and the condition of his person confessed and agreed to be such as aforesaid, the same is now to be decided according to the rule of law and justice, which is, that an alien born, only made denizen by letters patent, but not naturalized by act of parliament, is not, by law, eligible to serve as a burgess amongst the commons in parliament; for to have a voice, or interest, in making laws for the kingdom, is not committed to foreigners, who cannot but retain a special affection to their proper birth-place, and incline to favour the same, in such occasions as may occur concerning their nation; nor is it fit, that persons not equally obliged to, or interested in, the state of this kingdom, should be admitted to the secret and great council of the same; so as the Committee seemed to think clearly, that he was not eligible, yet did forbear to deliver any opinion therein, only directing the case and special matter to be reported to the house, and so to leave it to their order and judgement.

Within

Within very few days after a petition was exhibited to the Committee from the borough, to the effect of Sir George Moore's motion.

Whereupon, upon the first opportunity, the case was clearly reported to the house, and there, after good debate and consideration had thereof, it was declared and resolved, that Sir Walter Steward was not a person eligible to serve as burghes for the said borough, but no order was given at this time for the making of a warrant for a new election. But a good while after, namely, upon the 28 May, 22 Jac. being the day before the session was to end, the house being further moved in the matter, it was there questioned, if Mr. Steward should obtain an act of parliament for his naturalization, whether then his election and return might stand good: and it was held, that it could not, he being utterly incapable at the time of his election made. So it was now resolved and ordered, that a warrant should be made for the sending forth a new writ, to elect another burghes in his place.

XIX.

The Case concerning the Election of one of the Knights of the Shire for the County of Cumberland.

THE Committee was informed, by a petition, exhibited by Sir Robert Bannister, *knt.* with a certificate annexed from Mr. William Johnson, clerk of the outlawries, that Ferdinando Huddleston, *esq;* who was elected and returned as one of the knights of the shire for the said county, was outlawed at the time of the election, by twenty outlawries, all yet remaining in full force, at the suits of several persons, whereof some were after judgements; and thereupon the petitioner prayed the opinion and order of the house, according to law and justice.

This being admitted to be the case, it was well debated in the Committee, whether the said Mr. Huddleston

Huddleston was a person eligible so to serve in parliament, Yea or No.

And it was objected against him, that he which contemneth the law, and suffereth himself to stand outlawed, is not fit to make laws for others; and that in the first sessions of the parliament of the 1^o Jac. in the like case of Sir Francis Goodwin, he was directed to reverse his outlawry, which was accomplished, and then he served. But it was answered hereunto, that outlawries, before judgement, are, for the most part, gotten behind mens backs and without their privity; and that it may so happen against the best man in a county; for outlawries after judgement, it was said, they may be in default of satisfaction by such as are put in trust by the parties to prevent such outlawries, or through the indirect proceedings of others, the party outlawed being in little or no default; or admitting such outlawries before, or after, judgement were never so orderly, or just, yet the nature of an outlawry is chiefly to disable the party to his own prejudice, and not to the prejudice of the commonwealth; whereas if the most sufficient knight, or esquire, in the whole county, being outlawed, should thereby be made incapable to serve his country and the state in parliament,

liament, it were no little prejudice to the commonwealth, so to be deprived of the possibility to be served by the worthiest persons. And it was remembered by some of the Committee, that in the 1 Eliz. in the case of one John Smith *, who, being outlawed, was elected and returned one of the burgeses for the borough of Camilford, in Cornwall, it was resolved, upon the question, by the commons in parliament, that he was eligible, and might serve, his outlawry notwithstanding. And so in the 23 Eliz. in the case of one Friend; and in the 35 Eliz. in the case of one Mr. Kelligrew, outlawed eighteen times; and in the same parliament, in the case of Mr. Fitzherbert †, outlawed after judgement; and touching the case of Sir Francis Goodwin ‡, it was now declared, by some who were of that parliament, that divers of the judges did indeed deliver their opinions to the king, that they thought him not fit to serve, being outlawed; howbeit, after good debate thereof in the commons house, to whom it belongeth properly to judge in cases concerning their privileges; it was there resolved and ruled

* Vide printed Journal of the House of Commons, vol. I. p. 55.

† Vide Sir S. Dewes' Journal, p. 514.

‡ Vide Journal of the House of Commons, p. 149, 151, &c.
upon

upon the question, that Sir Francis Goodwyn was eligible, his outlawry notwithstanding; though, for better satisfaction to his Majesty, some direction, or intimation, was given, that he should reverse his outlawry, which was performed accordingly. But the records of the cases before vouched, not being produced, it was thought good by the Committee, to forbear the delivery of any opinion in the case in question, and so to report it to the house, waving it wholly to their resolution and order. And a report thereof being there made accordingly, it was, upon debate, finally resolved and ordered by the house, that Mr. Huddleston was a person eligible and well returned, and that the same election and return, should stand and continue in force.

XX.

The Case concerning the Election and Return of one of the Burgeſſes for the Borough of Eaſt-Retford, in the County of Nottingham.

SIR Nathaniel Rich, knt. being elected and returned a burgeſs for the borough aforeſaid, and alſo for the borough of Harwich, in the county of Eſſex, made his election to ſerve for Harwich; whereby the place of one of the burgeſſes for Eaſt-Retford became void, and, according to the uſual courſe of the houſe in ſuch caſes, a warrant was made by Mr. Speaker, for a new writ to go forth, for the choice of another burgeſs at Eaſt-Retford, in the place of Sir Nathaniel Rich; which new writ iſſued accordingly; and thereupon John Darcy, eſq; was returned as duely elected.

However,

However, two petitions were exhibited, the one by two of the aldermen and divers of the burgeses of East-Retford, supposing the election of Mr. Darcy to be void ; and that they gave their voices to Sir Edward Wortley, knt. yet not pretending the election of Sir Edward Wortley to be good, but charging Edward Browne, their town-clerk, with divers misdemeanors, in hindering the due election of Sir Edward Wortley, and procuring the unlawful return of Mr. Darcy, desiring order for a new writ, and punishment of the said misdemeanor.

The other, by the bailiffs and other ten aldermen there, supposing Mr. Darcy to be duly elected, yet charging Mr. Philip Spurling and others with undue practices, to have procured an election of Sir Edward Wortley, and with divers misdemeanors committed in seeking to disturb the election of Mr. Darcy, and praying that the delinquents therein might be punished as offenders against the privileges of the commons in parliament.

At the day appointed for the hearing of the cause, the counsel and witnesses on both sides attended ;

K

tended ; but then it was alledged, on the behalf of the first petitioners, that Mr. Darcy was dead, in whose death the question touching his election was at an end, and, consequently, the misdemeanors touching the same, being but incidents thereunto, could not be handled.

For the former, it was agreed by all, that, in respect no petitioner did suggest, nor any as *amicus curiæ* did inform the election of Sir Edward Wortley to be good, but only the election of Mr. Darcy to be void ; which, if it had been so found and adjudged, yet Sir Edward Wortley could not be brought in, or returned, without a due election upon a new writ ; and by the death of Mr. Darcy, were his election void, or not void, is come to pass, that a new writ now, of necessity, must go forth, therefore the validity of his election is not now examinable.

For the other matter, the whole Committee was clearly of opinion, that the misdemeanors, on either side, touching the undue preparation, or disturbance of the election, remained still examinable ; for the house of commons hath not only power to certify undue returns, but also to punish all offences committed to the carriage, or procurement,
of

of elections and returns, as contempts against the rights and privileges of that house: and albeit the election and return were lawful, yet may there be some such offences committed, touching the same, as may deserve punishment. For example sake, as it fell out in 12 Jac. in the case of Sir George Calvert and Sir Thomas Wentworth, knts. returned knights of the shire for the county of York, which election being adjudged good, yet some constables were punished, by order of the house, for their misdemeanors about the preparation for that election.

So the matter of the said misdemeanor, being deliberately heard and examined, the Committee found, and were of opinion, that in the passages touching the said election, Philip Spurling, esq; John Watt, clerk, Richard Welsh, and Henry Bishop, had committed several offences against the privilege of the commons in parliament. These proceedings of the Committee, being reported to the house, the house did well approve of the Committee's opinion in two several points, but in respect the principal matter was determined and settled by the death of Mr. Darcy, and the session of parliament was to conclude within a day or

two after this report made, and the offences committed were not very enormous, nor proved, for the most part, other than by single testimony, a motion was made, that the house, out of their grace and favour, would be pleased, in this case, to pass by the matter of misdemeanor also, whereunto they readily assented.

XXI.

The Case concerning the Election and Return of one of the Burgeſſes, for the Borough of Pontefraſt, in the County of York.

UPON information to the houſe of commons, that, upon a new writ for the election of one burgeſs for the borough of Pontefraſt, in Yorkſhire, the ſheriff had ſpecially returned both Sir John Jackſon and Sir Richard Beaumont, which ſeemed to be repugnant and void.

It was ordered, that the Committee of privileges ſhould examine the buſineſs, and make report thereof to the houſe; and, in the mean time, that both the ſaid Sir John and Sir Richard ſhould forbear to come into the houſe.

According to the direction of this order, the Committee met, and took consideration of the said return, upon view of the record, whereby the case concerning the same appeared to be thus :

That 24 Feb. 21 Jac. a writ issued, directed to the sheriff of York, rehearsing, how Sir Henry Hollcroft, knt. lately elected for this present parliament, which begun at Westminster the nineteenth day of the same February, to be one of the burgeses for the borough of Stockbridge, in the county of Southampton, and also one of the burgeses for the said borough of Pontefract, in the said county of York, had made his election to appear and stand for the said borough of Stockbridge; giving commandment to the said sheriff to cause another burges to be chosen, in the place of the said Sir Henry Hollcroft, for the said borough of Pontefract.

Upon which writ, Sir Henry Jenkins, knt. sheriff of York, made a special indorsement, and returned to this effect, viz. That, by virtue of this writ, 26 Feb. 21 Jac. he had made a warrant to the mayor, aldermen, and burgeses of Pontefract; the which mayor, with divers aldermen and burgeses

gesles of the same town, the 11th of March, in the same year, made answer unto him, that they had elected Sir John Jackson, knt. as by their indenture, under their seal, annexed, appeareth; and moreover certified, that afterwards, viz. the same 11th day of March, in the year aforesaid, divers other aldermen, and burgesles, of the said town of Pontefract, by virtue of the same warrant, made answer unto him, that they had elected and chosen Sir Richard Beaumont, knt. to be burgeses of the parliament for the same town, as by another indenture, under their seals, also annexed, appeareth.

Unto which writ, so indorsed, two indentures were annexed, both of them dated the 11th day of March, 21 Jac. The one between the mayor, aldermen, and burgesles of the town of Pontefract on the one part, and the said sheriff on the other part, testifying, that they, by virtue of a precept to them directed, from the said sheriff, bearing date the 26 of February last past, had elected the said Sir John Jackson; and concluding, that, in testimony thereof, as well the said mayor, aldermen, and burgesles, as the said sheriff, interchangeably had thereunto put their hands and seals. To which indenture was affixed a large seal, with the name of William Otes, mayor, and the names of more

than forty others, severally signed and subscribed.

The other indenture annexed, was between the said sheriff, of the one part, and William Tattom and fifteen others, by name, aldermen, within the borough of Pontefract, and others, burgesses of the the said town and borough, of the other part, testifying, that the said aldermen and burgesses, according to the warrant of the said sheriff, had, the same day, elected, and, by this indenture, did choose Sir Richard Beaumont, knt. one of the burgesses for the said town and borough of Pontefract; in testimony whereof, the parties aforesaid to the same indenture interchangeably had put their hands and seals. To which indenture were fifteen several seals, with the name of William Tattom, and more than twenty several mens names subscribed.

This being the case, divers questions were thereupon moved, and clearly agreed upon by the Committee.

First, If a man be duly elected, and yet not well returned, he cannot sit in the house until the return be amended; for a good election is only a
ground

ground to amend an undue return, but not to admit the party without a good return.

Secondly, If the return of the borough to the sheriff, or of the sheriff over to the court, have substance, it shall not be impeached for any want of form, or surplusage in matter.

Thirdly, If the return be absolutely and irreconcilably repugnant, then the same is utterly void; as if the same parties, by several indentures of the same date, do return two several persons to be burgeses, in one and the same manner, and for one and the same place, to the sheriff, and he, in the like manner, do equally, and without distinction, return them over to the court; in such case, neither of the parties, so returned, are to be admitted into the house, till the return be amended.

Lastly, Upon the whole matter, it was clearly agreed by the Committee, that the return, as it was, had substance sufficient to warrant Sir John Jackson to come into the house, there to serve as one of the burgeses for the said borough of Pontefract, until he may be removed upon complaint, and proof of his election to be undue, if there be
cause,

cause, whereof no petition, or complaint, was yet exhibited.

The reasons of the Committee for this opinion were these.

First, It is to be presumed, that the warrant directed by the sheriff, was well directed, nothing appearing to the contrary; and that is to the mayor, aldermen, and burgessees of Pontefract; and the indenture for Sir John Jackson is by the same parties, which fully answereth and satisfieth the precept.

Secondly, Whereas the return of the sheriff is only, that the mayor, with divers aldermen and burgessees, did make answer unto him, that they had chosen Sir John Jackson; yet, in respect he referreth to the indenture itself, which is annexed, and therein the word "divers" is not inserted, but "the mayor, aldermen, and burgessees in general;" which, by common intendment, is either all, or the greatest number of them, who, in law, have the voice and power of the rest, the indenture is to expound and qualify the words of the return in such sort, that, in substance, it is sufficient.

Thirdly,

Thirdly, The title of the parties to the indenture for Sir Richard Beaumont, answereth not to the direction of the sheriff's warrant, nor can be presumed to be made by the major part of the burgessees, or electors, for that the form thereof, in the conclusion, purporteth, that it was passed only by such whose hands, or seals, were set thereunto; which, by the view, was a fewer number than the parties subscribed to the other indenture, and consequently the greater number of electors maketh the election.

Fourthly, It appeareth, by the return, that the indenture for Sir Richard Beaumont was not exhibited until the indenture for Sir Richard Jackson had been accepted, so that it came unseasonably. And the sheriff doth rather certify, or express, the same to the court extrajudicially, than make it parcel of his return, as by the manner of his indorsement of the writ appeareth.

This opinion of the Committee, together with the reason of the same, being reported to the house, it was there resolved and adjudged, that Sir John Jackson might well come into the house upon the said return, such as it was; and, accordingly,
having

having taken the usual oaths, he was admitted, and there served as one of the burgeses, *de facto*, for the said borough of Pontefract.

But then a petition was exhibited in the name of William Tattom and others, as burgeses of the said borough, supposing Sir Richard Beaumont to have been lawfully elected; and that Sir John Jackson was unduly, and without warrant, returned in his stead: desiring examination and redress to be had, agreeable to justice, and the privilege of parliament.

Hereupon the matter was fully and deliberately heard, in the presence of counsel and witnesses on both sides; and the case, in substance, appeared to be thus:

The borough of Pontefract, being a parliamentary borough by prescription, was discontinued from the time of King Edward I. to the eighteenth year of the reign of King James, and then revived by order of the commons house of parliament. In the 4th Hen. IV. the king, by letters patents, did incorporate the same, by the name of Mayor and Burgeses of the town, or borough, of Pontefract, with power to elect thirteen
comburchenses,

comburgenses, viz. twelve besides the mayor; out of whom the mayor should be chosen, &c. But by reason of the long discontinuance of the said borough, there did not appear any known usage, or prescription, by whom the election should be made.

At the time of the election in question, some doubt being conceived upon the view who had the greater number of voices, Sir Richard Beaumont or Sir John Jackson, it was demanded, on the part of Sir Richard Beaumont, that the electors might be numbered by the poll; which course was entered into, but disturbed by the party of Sir Richard Beaumont. Whereupon the mayor broke off the poll, and caused the indenture to be sealed for Sir John Jackson.

Out of this case these points were agreed upon by the Committee;

First, Where no constant and certain custom appeareth who should be the electors in a parliamentary borough, there recourse must be had to the common law, or common right.

Secondly, That the said charter of incorporation doth not, in words, extend, nor can the matter

of any charter be of force to abridge, or alter, that common right, in case of an election to the parliament.

Thirdly, That, of common right, all the inhabitants, householders, and residents within the borough, ought to have voice in the election, and not the freeholders there only, as was now pretended, on the part of Sir Richard Beaumont, who claimed to have the greatest number of voices of men so qualified.

Fourthly, That however Sir Richard Beaumont claimed to be elected by most voices of freeholders only, yet the poll was well demanded on his part, by the name of all the electors; which words comprehended all inhabitants, householders, residents there, as well as freeholders. Wherefore note the difference between the manner of demanding the poll in this case, and in the case of Sir William Masters for the borough of Cirencester.

Fifthly, That the poll being duly demanded, and not effectually prosecuted, whereby it doth not certainly appear who had the most voices of the due electors, the election is void; albeit the disturbance grew of the part of Sir Richard Beaumont;
for

for no place is without constables, and every man is an officer to see the peace kept; whereby such disturbance might be prevented as well in a borough, as in a county at large, where the sheriff hath *posse comitatus*.

In conclusion, the Committee were of opinion, that a warrant ought to go forth for a new writ, the former election being void. Which being so reported to the house, was there resolved and ordered accordingly.

T H E E N D.

It is a common error to suppose that the
 only way to get the most out of a book is to
 read it all at once. This is a mistake. The
 best way to get the most out of a book is to
 read it in small portions, at intervals, and
 to think about it as you go along.

It is also a common error to suppose that
 the only way to get the most out of a book is
 to read it all at once. This is a mistake. The
 best way to get the most out of a book is to
 read it in small portions, at intervals, and
 to think about it as you go along.

It is also a common error to suppose that
 the only way to get the most out of a book is
 to read it all at once. This is a mistake. The
 best way to get the most out of a book is to
 read it in small portions, at intervals, and
 to think about it as you go along.

It is also a common error to suppose that
 the only way to get the most out of a book is
 to read it all at once. This is a mistake. The
 best way to get the most out of a book is to
 read it in small portions, at intervals, and
 to think about it as you go along.

It is also a common error to suppose that
 the only way to get the most out of a book is
 to read it all at once. This is a mistake. The
 best way to get the most out of a book is to
 read it in small portions, at intervals, and
 to think about it as you go along.

It is also a common error to suppose that
 the only way to get the most out of a book is
 to read it all at once. This is a mistake. The
 best way to get the most out of a book is to
 read it in small portions, at intervals, and
 to think about it as you go along.

It is also a common error to suppose that
 the only way to get the most out of a book is
 to read it all at once. This is a mistake. The
 best way to get the most out of a book is to
 read it in small portions, at intervals, and
 to think about it as you go along.

It is also a common error to suppose that
 the only way to get the most out of a book is
 to read it all at once. This is a mistake. The
 best way to get the most out of a book is to
 read it in small portions, at intervals, and
 to think about it as you go along.

It is also a common error to suppose that
 the only way to get the most out of a book is
 to read it all at once. This is a mistake. The
 best way to get the most out of a book is to
 read it in small portions, at intervals, and
 to think about it as you go along.

I N D E X

TO THE

R E P O R T S.

AFFIDAVITS not to be admitted or read as proofs
in any cause touching Elections and Returns,

p. 84. *Marten in Chanc. not competent to*

An Alien born made Denison by Letters Patent, but not
naturalized by Act of Parliament, is not by law eligi-
ble to serve in Parliament, 122.

Amersham, Marlow, Wendover, and Hertford Boroughs,
case of, 87—96.

Antient Records said to be lost, 93, 94.

Arundel Borough, case of, 71—75.

B

Bannister, Sir Robert, Knt. 124.

Beaumont, Sir Richard, 133, 135, 136, 139, 140, 141,
142.

Berkeley, Sir Maurice, Knt. 104, 106, 107.

Blechingley Borough, case of, 29—46.

L

Bromfield,

Bromfield, Robert, Esq; p. 7, 8, 9, 10.

Bye-Law, Constitution, or Decree, cannot alter the
Manner or Right of Elections to Parliament, 17. 66.

*Barliff of a borough, not being a peer of it, but only
servant to the Lord of it, not intitled to receive a writ
of election. 27.*

C
Casting voice, mayor of a town has not it of com-
mon right; but there must be custom or some special
matter. 21.

Cambridge County, case of, 80—86.

Cannon, Sir Thomas, Knt. 112, 113.

Cecil, Sir Edward, Knt. 63, 66, 69, 115.

A Charter cannot alter or abridge the form and right of
Election for Burgeffes to the Parliament, 54, 55, 66, 67.

Chaworth, Sir George, Knt. 71, 72, 73, 74, 75.

Chippenham Borough, case of, 47—63.

Cirencester Borough, case of, 104—111.

Corbett, Sir John, 3, 5, 6.

Court and Counsel of Discretion and State, the House of
Commons so stiled, 4, 27.

Cradock, Matthew, Esq; 25, 26, 28.

Cumberland County, case of, 124—127.

By Custom a Borough may have lawful Right to send
Members to Parliament, though it be no Corporation,
54.

Catts, Sir John, Knt. 80, 82.

*Commonant within a the county, whether
it: member must be to be eligible. Introd. xvii.*

D
Darcy, John, Esq; 128, 129, 130.

Double Return, cases of, 8, 52, 133.

Dover Borough, case of, 63—70.

Dutton,

Dutton, John, Esq; p. 99, 100.

Dyott, Richard, Esq; 25, 26, 28.

Electors cannot refuse. 1766.

Electors, right of, not alterable by charter 55.

Not alterable by bye-law 17.

Estcourt, Sir Thomas, Knt. 99, 100, 101, 103.

Equality of voices, in case of, election, still?

be adjourned & meet again till there is a plurality before a majority is reached
by, 21. On equality, F an elector may give his
vote another way. *Mid & 51. See 74. 110. 111. 112. 113.*

Finch, John, Esq; 12, 16, 17, 21, 22, 23.

Fleetwood, Sir Myles, Knt. 29, 30, 32, 41.

Franklyn, Sir John, Knt. 117.

G

Gawdy, Sir Robert, 3.

Gerrard, Sir Gilbert, Bart. 117.

Gifford, Sir Richard, 97, 98.

Glanville, Mr. 95, 96.

Gloucester County, case of, 99—103.

H

Hakevill, Mr. 88, 90, 94, 95, 96.

Hatton, Sir Thomas, 115.

Haverfordwest, case of, 112—114.

Hayward, John, Esq; 29, 31, 32, 39, 43.

Heath, Sir Robert, his Majesty's Solicitor General, 88.

Hertford Borough, see Amerham, 87.

Holcroft, Sir Henry, 97, 98, 134.

Holland, Sir Thomas, Knt. p. 3, 5, 6.

Huddleston, Ferdinando, Esq; 124.

I

Infants not being 121.

Jackson, Sir John, 133, 135, 137, 138, 139, 140, 141.

Jenkins, Sir Henry, Knt. 134.

Inhabitaney. 14. 18. Absence of 3 months or more under a year & a day not sufficient to determine inhabitaney. 10.

K

Keeling, John, Esq; 76, 77.

L

Leveson, Richard, Esq; 76, 77.

Liberties and Privileges of the Commons in Parliament,

Offenders against them committed, 41, 83, 118, 131.

Lovell, Henry, Gent. 29, 30, 31, 33, 39, 42.

M

Malmesbury Borough, case of, 115, 116.

Marlow Great, see Amerham, 87.

Martin, Richard, 16.

Maister, Sir William, Knt. 104, 106, 107, 108, 109,

110, 111.

Maynard, John, Esq; 47, 50, 58, 61, 62.

Maynard Charles, Esq; 47, 52, 53, 59, 61.

Middlesex County, case of, 117—119.

Mill, Richard, Esq; 71, 72, 73, 74, 75.

Mingaie,

Mingaie, Francis, Esq; p. 7, 8, 9, 10.

Monmouth Borough, case of, 120—123.

Moore, Sir George, Knt. 120.

N

Newcastle Under Line, Borough, case of, 76—79.

Norfolk County, case of, 3—6.

Noy, Mr. one of the Committee, 88.

Notice, see Warning

O

Order, objected, but not granted, at house of com. can't
Order in the House upon Divisions, a question of,

4, 5, 6.

Outlaw, whether eligible. Intrad. lxxiii.

Declined, elig. lxxv. vii. P

Precept, before reading up, too early to give vote 20.

Palavicini, Toby, Esq; 80, 81, 82.

Peyton, Sir Edward, Knt. 80, 81, 82, 83,

Pontefract Borough, case of, 133—143.

Poole, Henry, Esq; 104, 105, 107.

Popham, Sir Francis, 48, 51, 52, 53, 61, 62.

Powell, Lewis, Esq; 112, 113.

Poyntz, Robert, Esq; 99, 100.

Proofs given before the Committee to be reported to the House, 4.

Pym, John, Esq; 47, 48, 51, 52, 53, 61.

Roll, must be taken, if demanded, on a
contrivance of votes. 10.

R

Resolutions—The whole Kingdom hath an interest in every particular Member, 118.

Resolutions—This Court and Council of State and Justice, is guided by peculiar, more high, and politic Rules of Law and State, than the ordinary Courts of Justice, p. 59, 60.

———— The Right by Custom or Prescription for a Borough to send Burgeses, ought to be proved by Matter of Record, and not by the Testimony of Witnesses, 92.

———— The Matter of a Petition may be reserved and adjourned to be examined in the next Session, 113, 114.

———— The King unwilling to have the number of Burgeses increased, 88, 94.

———— The form of Indentures of Return are not conclusive to bind the Parliament, 35.

———— The House may question any Election or Return, although no party grieved do complain, 119.

———— Where there is no certain Custom or Prescription, recourse must be had to Common Right, 107, 141.

———— The House of Commons in Parliament is a distinct Court of Record of itself, 85.

———— The House of Commons the proper Judges in Cases concerning their Privileges, 126.

———— The House is as well a Council of State and Court of Equity and Discretion, as a Court of Law and Justice, 27.

———— The House of Commons is a Council of State and Court of Equity, touching things appertaining to their Cognizance as well as a Court of Law, 118, 119.

Resolutions

Resolutions—The Commonwealth hath an Interest in every particular Member, p. 59.

———— The Committee not to be precluded from proceeding by the neglect of the Parties, but may proceed *ex officio*, 118.

———— The Commons in Parliament are not concluded by the Indentures or Return, if the same be not warranted by a due Election, 59.

———— The Agreement of Competitors or others cannot alter the Law, 108.

———— The administering an Oath to the Freeholders of a Borough, is an unlawful act, 109.

———— Of Common Right, the Mayor of a Town hath no casting or over-ruling Voice in case of an equality, 21.

———— Of Common Right, all Inhabitants, Household-ers, Resiants within the Borough, have voices, 107, 142.

———— The House of Commons hath not only power to certify undue Returns, but also to punish all offences committed to the carriage or procurement of Elections and Returns, 130, 131.

———— It is the antient and natural undoubted privilege and power of the Commons in Parliament to examine the validity of Elections and Returns, and to punish offenders, 60.

———— A man is eligible against his consent, and contrary to his desire, and being lawfully chosen, cannot refuse to serve, 101.

Resolutions—An outlaw eligible to serve in Parliament,
case of Mr. Huddleston, p. 124—127.

———— By prescription, or custom, the right of Elec-
tion may be restrained, limited, or abridged, 34.

———— A Return without a due Election is void, 21; 22.

———— If a Return be repugnant it is utterly void, 137.

———— If a Return hath substance, it shall not be im-
peached for want of form, 137.

———— If a Warrant, Precept, or Return have suffi-
cient substance it shall not be adjudged void for want
of form, 37, 38.

———— Non-residence, Resolution on, 18.

Retford, East, Borough, Case of. 128—132.

Returns amended, 61, 62, 75. *Words of no decisive of right
of election. 58.*

Rich, Sir Nathaniel, knt. 128.

*Returning officer, whether eligible as member
for some place. Introduction 1xx.*

Selden, Mr. one of the Committee, 88, 89.

Southwark, Borough, Case of, 7—11.

Spiller, Sir Henry, 72, 73.

Stafford, Borough, Case of, 25—28.

Stepneth, Sir John, knt. 113.

Steward, Sir Simon, knt. 80, 81, 83.

Steward, Walter, esq; 120, 122, 123.

Stockbridge, Borough, Case of, 97.

Suckling, Sir John, knt. 117, 119.

*Sheriff, whether eligible for his own county. Intro.
lxxviii.*

Temple,

T.

- Temple, Sir Alexander, p. 12, 16, 17, 20, 21, 22, 23.
 Tilden, Jonathan, 14, 16, 17, 20, 21, 23.
 Tilden, Daniel, 14, 16, 17, 20, 21, 23.
 Townshend, Sir Roger, 3.

V.

- Vere, Sir Edward, knt. 76, 77, 79.

W.

- Walter, Sir William, knt. 25, 26.
 Warden, Sir Edward, knt. 115.
 Warning to Electors, Cases and Resolutions on, 19, 20,
 26, 27, 32, 38, 58, 63, 68, 70, 78, 97, 98. *18th presumed,*
when he is done in the way. 70. 90.
 Wendover, see Amerlham, 87.
 Wentworth, Sir Thomas, knt. 131.
 Winchelsey, Case of, 12—24.—And Resolutions there-
 upon, 17.
 Wogan, Sir William, knt. 113.
 Wortley, Sir Edward, knt. 128, 129, 130.
 Wymond, Paul, Mayor of Winchelsey, 12, 13, 23, 24.

Y.

- Yarwood, Mr. Richard, 7, 8, 9, 10.
 Younge, Sir Richard, knt. 63, 66, 69.

E R R A T A.

Page 60. l. 19. for *any* read *away*

92. l. 21. for *by* read *that*

l. 22. for *was* read *were*

